

Report on the
Alabama Securities Commission
Montgomery, Alabama



**Department of
Examiners of Public Accounts**

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July 11, 2007

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Securities Commission** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Securities Commission**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones".

Ronald L. Jones,
Chief Examiner

Examiner
Calvin Cooper

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PROFILE

Purpose/Authority

The Alabama Securities Commission was created by Act No. 740, *Acts of Alabama 1969*. The commission enforces laws governing issuance, sale, and other transactions relative to securities. The commission registers broker/dealers, broker/dealer agents, investment advisors, and investment advisor representatives. The commission also registers securities, issues certificates of notification for certain industrial revenue bonds, and licenses firms that sell checks, drafts, and money orders. The commission investigates complaints and fraudulent transactions. Current statutory authority for commission operations is found in the *Code of Alabama 1975*, Sections 8-6-1 through 8-6-122 and 8-7-1 through 8-7-15.

Commission Characteristics

Members and Selection	<p>Seven (7) members consisting of:</p> <ul style="list-style-type: none">(3) Ex officio members<ul style="list-style-type: none">Attorney GeneralSuperintendent of BanksSuperintendent [Commissioner] of Insurance(4) Members appointed by the governor with the advice and consent of the Senate <p><i>Code of Alabama 1975</i>, Section 8-6-51(a)</p>
Term	<p>Appointed members serve staggered four (4) year terms and continue to serve until their successor is qualified. Appointed members may not serve more than two (2) consecutive terms.</p> <p><i>Code of Alabama 1975</i>, Section 8-6-52(a)</p>
Qualifications	<p><u>Appointed members:</u></p> <ul style="list-style-type: none">Two members of the Alabama Bar AssociationTwo certified public accountants <p><i>Code of Alabama 1975</i>, Section 8-6-51(a)</p> <p>No member may be a registered dealer or salesman, or an officer, director, or a partner of any registered dealer or salesman.</p> <p>No member may be an officer, director, or partner of an issuer who has a registration statement issued by the commission.</p> <p><i>Code of Alabama 1975</i>, Section 8-6-51(b)</p>

Racial Representation	No statutory requirement One (1) minority race member
Geographical Representation	No statutory requirement
Consumer Representation	No statutory requirement
Other Representation	No statutory requirement
Compensation	Appointed members only - \$50 per day not to exceed 60 days in any one calendar year while engaged in the performance of duties. Ex officio members are not entitled to any extra compensation for performing their duties. Mileage and per diem as provided for state officers and employees. <i>Code of Alabama 1975, Section 8-6-54</i>
<u>Operations</u>	
Administrator	Joseph P. Borg, Director <ul style="list-style-type: none"> • Appointed by the commission (<i>Code of Alabama 1975, Section 8-6-55(a)</i>) • Annual Salary \$132,357.60 • Salary fixed by the commission in the salary range payable to attorneys in the Merit System Classification Attorney IV (<i>Code of Alabama 1975, Section 8-6-56(c)</i>)
Location	770 Washington Avenue, Suite 570 Montgomery, AL 36130 Office must be located in the capital city. (<i>Code of Alabama 1975, Section 8-6-60</i>)

Examinations	<p>Dealer/agent applicants who intend to engage in securities transactions must pass the Uniform Securities Agent State Law Examination (USASLE) administered by the National Association of Securities Dealers (NASD) or the Uniform Combined State Law Examination.</p> <p><i>(Code of Alabama 1975, Section 8-6-3 Administrative Rule 830-X-3-.08)</i></p>
Renewals	<ul style="list-style-type: none"> • Broker/dealer registration expires December 31. <i>(Code of Alabama 1975, Section 8-6-3(f)(3) and Administrative Rule 830-X-3-.01(3))</i> • Agent registration expires December 31. <i>(Code of Alabama 1975, Section 8-6-3(f)(3) and Administrative Rule 830-X-3-.02(6))</i> • Investment advisor registration expires December 31. <i>(Code of Alabama 1975, Section 8-6-3(f)(3) and Administrative Rule 830-X-3-.03(3))</i> • Investment advisor representative registration expires December 31. <i>(Code of Alabama 1975, Section 8-6-3(f)(3) and Administrative Rule 830-X-3-.04(5))</i> • Sale of check registrations must be renewed on or before April 1 <i>(Code of Alabama 1975, Section 8-7-6)</i> • On-line renewal is not available.
Licensees	<ul style="list-style-type: none"> • Broker/Dealer1,653 • Broker/Dealer Agent.....82,269 • Investment advisor (Federal).....893 • Investment Advisor (State).....107 • Investment Advisor Representative.....2,318 • Sale of Checks Vendor.....102 • Total.....87,342
Reciprocity	No statutory authority/requirement
Continuing Education	No statutory requirement
Employees	Forty-one (41) Merit System Classified Employees
Legal Counsel	<p>J. Randall McNeill – General Counsel/Deputy Director</p> <p>Edwin L. Reed – Assistant Attorney General</p> <p>Jane L. Brannan – Assistant Attorney General</p>

Subpoena Power	Both witnesses and records (<i>Code of Alabama 1975</i> , Section 8-6-15(b))
Internet Presence	www.asc.alabama.gov <ul style="list-style-type: none"> • Investment Alert • Presentation Request • Agency Directory • Investor Education & Fraud Prevention • News Releases • News Letters • Administrative Actions • Statutes, Regulations & Policies • Alabama Filing Requirements • Complaints • Helpful Web Sites for Investors
Attended Board Member Training	<p>The Commissioner of Insurance (an ex officio commission member)</p> <p>Bill Garrett, Assistant Attorney General who frequently acts as proxy on behalf of the Attorney General (ex officio commission member).</p> <p>The chief accountant, the manager of investigations, and a registration manager.</p>
<u>Financial</u>	
Source of Funds	Licensing and registration fees
State Treasury	<p>All money collected by the Securities Commission is deposited either directly into the state's General Fund or into one of commission's three special revenue funds, as the law requires depending on the nature of the receipt.</p> <p><i>Code of Alabama 1975,</i> General Fund - Section 8-6-33 Sale of Checks - Section 8-7-6 Operating Fund - Section 8-6-3(h) Industrial Revenue Bond Fund - Section 8-6-115</p>
Unused Funds	Unused funds in the commission's three special revenue funds remain on hand for future use by the commission.

SIGNIFICANT ITEMS

HB797 was introduced in the 2007 Legislative Session to provide for the following:

- Increase the licensing and registration fees for dealers, agents, investment advisers, representatives, and securities under the purview of the Alabama Securities Commission.
- Increase the criminal penalty for violation of the antifraud provisions from a Class C felony to a Class B felony;
- Increase the maximum civil liability from \$50,000 to \$1,000,000.

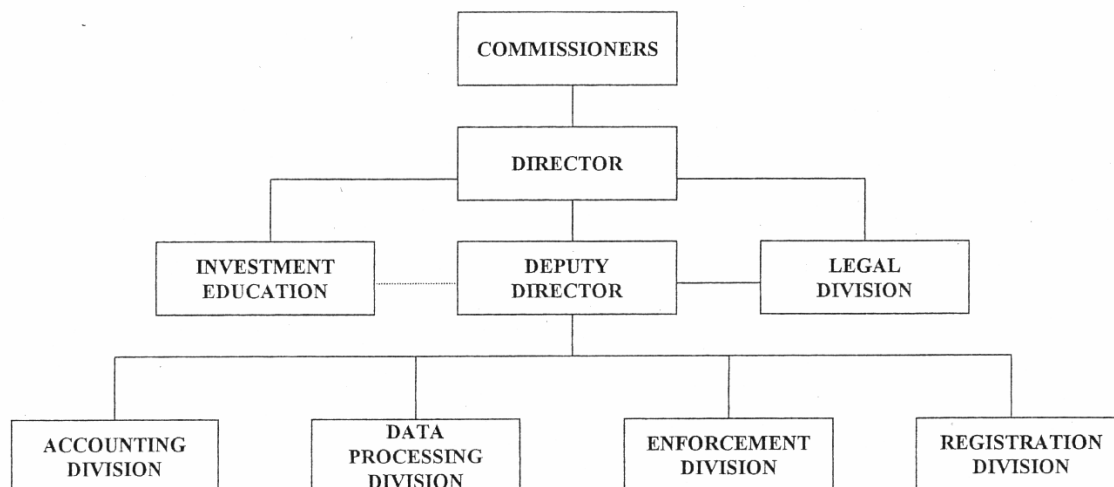
HB797 did not become law. The bill is included in the appendices of this report.

STATUS OF PRIOR FINDINGS

All prior findings have been resolved.

ORGANIZATION

**ALABAMA SECURITIES COMMISSION
TABLE OF ORGANIZATION**



PERSONNEL

Merit System Classification	Number	Race	Gender
Clerical Aide	1	Black	Female
Clerk	1	Black	Female
Executive Secretary	1	White	Female
Administrative Support Assistant I	2	White	Female
Administrative Support Assistant II	2	White	Female
Administrative Support Assistant III	2	White	Female
IT Systems Specialist	1	White	Male
Account Clerk	1	Black	Female
Accounting Manager	1	White	Female
Training Specialist II	1	White	Male
Public Information Specialist	1	White	Male
Special Agent (9)	2	Black	Male
	7	White	Male
Senior Special Agent	2	White	Male
Securities/Insurance Registration Manager	2	White	Female
Securities Analyst (7)	4	Black	Female
	1	White	Female
	2	White	Male
Securities Commission Deputy Director	1	White	Male
Securities Commission Director	1	White	Male
Legal Research Assistant	2	White	Female
Attorney III (2)	1	White	Female
	1	White	Male
Executive Assistant II	1	White	Female

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee **2,130**

Number of Persons per Licensee in Alabama and Surrounding States

TYPE OF LICENSE	ALABAMA	FLORIDA**	GEORGIA	MISSISSIPPI***	TENNESSEE
Population*	4,599,030	18,089,888	9,363,941	2,910,540	6,038,803
Broker/Dealer	2782	5592	3951	1949	3651
Broker/Dealer Agent	56	80	68	44	73
Investment Advisor (Federal)	5150	6668	6766	4088	5708
Investment Advisor (State)	42982	17563	21981	55972	35109
Investment Advisor Representative	1984	807	1158	2452	1438
Sale of Checks Vendor	45089	14828	n/a	n/a	n/a

* U.S. Census Bureau Website – Estimates for 2006

** Data as of 6/30/2006

*** Data for Broker/Dealers and Broker/Dealer Agents as of 9/30/2006; other figures as 12/31/2006

Operating Disbursements per Licensee (last fiscal year)**\$40.54****Notification to Licensees of Board Decisions to Amend Administrative Rules**

The Securities Commission notifies licensees of decisions to amend administrative rules through advertisement in the *Administrative Monthly* as required by the state's Administrative Procedure Act.

Complaint Resolution

Average Months Cases Remained in Pending Status
(Cases Closed During the Fiscal Year)

	2005/06	2004/05	2003/04	2002/03
Initial Inquiry Files	1.7	2.5	3.5	1.2
Substantive Files	9.8	13.2	16.9	9.7

Note: According to commission's staff, the preceding information, in most instances, reflects cases that were opened in a fiscal year other than the fiscal year in which they were closed. Substantive files are not closed until all administrative, civil, and criminal actions are completed either by the commission, the district attorneys, the Attorney General, or the courts. It is not unusual for the commission's investigative work on a case to be completed within a few months, but final resolution may take 1 to 2 years to reach a final court order. The length of time from opening to closing is directly proportional to the number of investors, bank records, etc. that have to be interviewed and analyzed.

Schedule of Complaints Received/Cases Initiated October 1, 2003 Through September 30, 2006				
Fiscal Year	2003/04	2004/05	2005/06	Total
Formal (S) Case Investigations	53	81	71	205
Inquiry (I) Investigations	84	85	84	253
Total Cases Received	137	166	155	458

*Individual cases may include multiple complainants.

Schedule of Closed Case Dispositions* October 1, 2003 Through September 30, 2006					
		2003/04	2004/05	2005/06	Totals
Cases Closed	Inquiry **	73	100	68	241
	Not Actionable***	13	6	27	46
	Administrative Action	36	22	40	98
	Civil Action	0	2	1	3
	Criminal Action	4	10	2	16
Total Complaints Closed		126	140	138	404
As of September 30, 2006 there were 5 individuals awaiting Grand jury, 5 Individuals pending arrest, and 22 individuals awaiting trial.					

*Individual cases may include multiple complainants.

** Preliminary investigation indicated that there was no probable cause.

*** Investigation completed no. Investigation determined no violation of the Alabama Securities Act or any other state, federal or regulatory statute or rule.

In addition to complaints that result in the creation of either an Inquiry Investigation (I) file or Formal Case (S) file for investigation, the commission also generates “Corporate Inquiries”. Corporate inquiries are the result of the commission’s review of corporate registrations with the Secretary of State’s (SOS) office that indicate possible securities activities. If the SOS registrants are not already registered with the commission, they are contacted and required to provide a more detailed explanation of their activities so a determination can be made regarding the nature of their activities and need to register with the commission.

Schedule of Corporate Inquiries October 1, 2003 Through September 30, 2006				
	2003/04	2004/05	2005/06	Totals
Corporate Inquiries*	187	392	304	883

*According to Commission staff, corporate inquiries are usually resolved within 30 days.

Complaint Process

Investigation Personnel	Complaints are investigated using a combination of investigative and financial analyst staff. Section 8-6-58(d) requires special agent investigative staff to be sworn law enforcement officers.
Initial Documentation	Complaints may be received by the commission orally, written or by third party. Commission complaint forms are available to the public by mail or on the commission’s website. The initial complaint is assigned to a special agent who interviews the complainant and gathers any pertinent documents.
Disposition Without a Hearing	Upon completion of the special agent’s investigation, the agent prepares a report with recommendations which is forwarded to the two senior special agents for review. Complaints considered to be without cause are also filed with any other complaints about the same person/company, but no action is taken.
Anonymous Complaints	An inquiry is conducted on anonymous complaints to determine if further action is necessary.

Commission Member Status During Hearing	Administrative actions are normally decided at an informal hearing composed of the commission's director, a senior special agent, the investigating special agent, and the commission's legal counsel. The decision reached at the informal hearing can be appealed to the full commission. No commission member is involved in the investigation.
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Information on the commission's administrative actions is available on the commission's Internet website. Criminal actions are processed through the judicial system.

SMART BUDGETING

Acts of Alabama, 2004-50 (HJR89) states, "That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals in performance based budget language and form. This request is applicable for proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter."

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to report its performance, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, Transparent.

As a part of the SMART Budgeting system, each agency is required to submit its goals and objectives to the Department of Finance - the goals to be stated as long-term, multi-year targets which are to be achieved through accomplishment of stated objectives, which are single-year targets. In order to report progress, the goals and objectives must necessarily be designed so that the agency can measure annual progress toward their achievement. The SMART Budgeting system includes an Operations Plan and a Quarterly Performance Report. The performance report presents information on achievement of an agency's annual objectives, and is the SMART Budgeting report that presents performance information. If an agency has not included at least one objective for each goal, performance relative to that goal will not be reported. For the 2006 fiscal year, each licensing/regulatory agency was required to have at least one goal and one or more objectives directly related to the goal. Additional annual objectives were allowed without corresponding goals

Among agencies that were not used to reporting performance, we found confusion as to how to design the goals and objectives and how to differentiate between goals and objectives. Routinely we found goals with no directly related objectives. Both goals and objectives were often too abstract to be measurable, and progress toward their achievement could not be meaningfully reported. The Department of Finance is aware of these deficiencies and is taking remedial steps.

The Alabama Securities Commission is included in the state's SMART Budgeting program. The commission provided information in a timely manner to the SMART budgeting analyst, as required, and completed the required forms. The agency's SMART Budgeting 2006 and 2007

Operations Plan and its 2006 4th Quarter Performance Report are included in the appendices of this report. The commission's goals and objectives related to performance and its reported performance are presented in the following table, along with the examiner's comments.

2006 GOALS	COMMENTS
<p>To ensure that only qualified investment professionals conduct business in Alabama by maintaining licensing standards, conducting audits and examinations and evaluating non-exempt securities offerings, including pre-clearance of industrial development bonds and sale of check filings.</p>	<p>The goal actually contains three goals. The goals do not provide any long-term measurable benchmarks to be achieved.</p> <ul style="list-style-type: none"> • There is no directly related objective for “maintaining licensing standards”. Consequently, performance for this goal was not reported. • There are directly related objectives for “conducting audits and examinations”. Performance for this goal was reported. • One objective appears directly related to “evaluating non-exempt securities offerings”. Consequently, performance for this goal was reported
<p>To review and investigate complaints from citizens and potential violations of the Alabama Securities Act, where evidence warrants, bring Administrative, Civil or Criminal enforcement actions.</p>	<p>This goal actually contains two goals. The goals do not provide any long-term measurable benchmarks to be achieved.</p> <ul style="list-style-type: none"> • Review and investigate complaints and potential violations - There is no directly related objective. Consequently, performance for this goal was not reported. • Bring Administrative, Civil or Criminal enforcement actions. There is at least one objective directly related to this goal. Performance for this goal was reported.
<p>To provide Alabama citizens financial education programs and information to protect savings, investments, retirement pensions and other assets and enhance personal finance skills.</p>	<p>This goal actually contains two goals. The goals do not provide any long-term measurable benchmarks to be achieved.</p> <ul style="list-style-type: none"> • Provide financial education programs – There is no directly related objective. Consequently, performance for this goal was not reported. • Provide financial information – There are directly related objectives. Performance for this goal was reported.

To maintain current information on all investment professionals and provide such information upon request to the public.	<p>This goal actually contains two goals. The goals do not provide any long-term measurable benchmarks to be achieved.</p> <ul style="list-style-type: none"> • Maintain current information – There is no directly related objective. Consequently, performance for this goal was not reported. • Provide information – There is a directly related objective. Performance for this goal was reported.
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2006 OBJECTIVES (from 2006 Operations Plan)	REPORTED PERFORMANCE	COMMENTS
Reduce initial review time for standard applications by 10%.	5.92 avg. days	This objective was amended in the performance report to “ maintaining initial review time ”. No target time is stated in the amended objective and no target time is shown in the performance report. Consequently, there is no basis in the performance report from which to determine whether the reported time met the objective.
Reduce response time for all requests for in-house public information to within a 30 day time frame.	8.02 avg. days	This objective was amended in the performance report to “ maintaining the response time ”. No target time was stated in the amended objective and no target time is shown in the performance report. Consequently, there is no basis in the performance report from which to determine whether the reported time met the objective.
Reduce time required to conduct routine investment adviser on-site evaluations by streamlining the audit process.	14.3 avg. hrs.	This objective was amended in the performance report to “ maintain current time ”. No target time is stated in the amended objective and no target time is shown in the performance report. Consequently, there was no basis in the performance report from which to determine whether the reported time met the objective.

Reduce time required to produce routine final audit report by utilizing North American Securities Administrators Electronic Exam Module.	11.6 avg. days	This objective was amended in the performance report to “ Produce routine audit reports in allotted time frame ”. No target time is stated in the amended objective and no target time is shown in the performance report. Consequently, there is no basis in the performance report from which to determine whether the reported time met the objective.
Maintain the quality of the Commission’s 95% conviction rate .	100%	This objective was amended in the performance report to “ maintain conviction rate ”. No target rate is stated in the objective and no target rate is shown in the performance report. Consequently, there is no basis in the performance report from which to determine whether the reported rate met the objective.
Maintain 5 business day initial response time to all complaints filed with the Commission.	2.3 days	This objective was amended in the performance report to, “ maintain complaint response time ”. No target time is stated in the objective and no target time is shown in the performance report. Consequently, there is no basis in the performance report from which to determine whether the reported time met the objective.

2007 GOALS (from 2007 Operations Plan)	COMMENTS
G1: Maintain licensing standards to ensure only qualified investment professionals conduct securities business in Alabama.	The goal has no long-term, measurable target and has no directly related objectives. Consequently, performance for this goal will not be reported.

<p>G2: Maintain adequate continual training and professional development in licensing, auditing, etc.</p>	<p>The goal is actually two goals. The goals do not provide any long-term measurable targets to be achieved.</p> <ul style="list-style-type: none"> • “Maintain adequate training and professional development” - The goal is too broad and has no directly related objectives. Consequently, performance for this goal will not be reported. • Maintain continual training and professional development” – The goal is too broad and has no directly related objectives. Consequently, performance for this goal will not be reported.
<p>G3: Enhance citizen financial awareness</p>	<p>The commission’s effect on citizen financial awareness is not subject to meaningful measurement, and the goal has no directly related objectives. Consequently, performance for this goal will not be reported.</p>
<p>G4: Safeguard and enhance agency revenue</p>	<p>This goal is actually two goals. The goals do not provide any long-term measurable benchmarks to be achieved.</p> <ul style="list-style-type: none"> • “Safeguard agency revenue” – The goal is too abstract and has no directly related objectives. Consequently, performance for this goal will not be reported. • “Enhance agency revenue” – Reporting achievement of this goal will not provide information on the how well the agency is performing its stated mission. There are no directly related objectives. Consequently, performance for this goal will not be reported.

<p>2007 OBJECTIVES (from 2007 Operations Plan)</p>	<p>COMMENTS</p>
<p>Maintain initial review time for standard applications in conformance with statute</p>	<p>A target of 20 days is shown in the projected performance report. However, no target time is stated in the objective and no target time will be presented in the final performance report. Consequently, there will be no basis in the final performance report from which to determine whether the reported time met the objective.</p>

Maintain initial response time for all requests for national database/inquiries for public information to within the 30 day time frame.	A target of 30 days is clearly stated in the body of the objective. Performance for this objective can be meaningfully reported if the target time remains stated in the objective as presented in the final performance report.
Maintain current time required to conduct routine investment advisor on-site examinations by streamlining the audit process.	A target time of 2 days is shown in the projected performance report. However, no target time is stated in the objective and no target time will be presented in the final performance report. Consequently, there will be no basis in the performance report from which to determine whether the reported time met the objective.
Produce routine investment adviser audit reports within allotted time frame by utilizing North American Securities Administrators Association Electronic Exam Module	A target time frame of 14 days is shown in the projected performance report. However, no target time is stated in the objective and no target time will be presented in the final performance report. Consequently, there will be no basis in the final performance report from which to determine whether the reported time met the objective.
Maintain the quality of the Commission's 95 %+ conviction rate.	The objective would be clearer if the words "the quality" were removed. A target of 95% is clearly stated in the body of the objective as presented in the projected performance report. If the target remains stated in the objective in the final performance report, the objective can be properly reported.
Maintain 5 business day initial response time to all complaints filed with the Commission.	A target of 5 business days is clearly stated in the body of the objective, as presented in the projected performance report. If the target remains stated in the objective in the final performance report, the objective can be properly reported.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

According to the commission, the commission has major contacts/affiliations with the following regulatory entities and/or associations concerning securities regulation.

NASD (formerly the National Association of Securities Dealers) – NASD is a United States Congressionally mandated self-regulatory agency with regulatory authority over securities broker-dealers, agents and sales practices. To carry out its regulatory duties, NASD operates a national database, the Central Registration Depository ("CRD"), under contract with the North American Securities Administrators Association ("NASAA"). The database contains registration

and disciplinary information for all broker-dealers and their agents, which includes past employment history, regulatory exams, education, civil proceedings, customer complaints and certain criminal history. The Alabama Securities Commission staff, along with the staff of other securities regulators and the NASD, enter and update registration and disciplinary information in the CRD.

New York Stock Exchange (NYSE) - The commission coordinates its resources with the NYSE when working the same or a similar case involving market surveillance, insider trading and exchange of information on trading trends and practices.

U. S. Securities and Exchange Commission (SEC) - There is a dual federal/state regulation of some securities. According to the commission, the SEC regulates firms, public securities issues and also investment advisers with assets of over \$25 million under management. Also included in SEC regulation are such issues as Reg A, Reg D, 506, 505 and 504, securities issues, among others. All matters pertaining to the Securities Act of 1933 and 1934 (as amended) are primarily within SEC jurisdiction and secondarily regulated by state regulators. Dual regulation is usually in the area of broker/dealer firms, broker/dealer agents, and stock issuers. There is less overlap with respect to investment advisers. The states have exclusive authority over investment adviser representatives, and the SEC does not register them. The SEC generally does not regulate broker/dealer agents except in fraud cases.

North American Securities Administrators Association (NASAA) - According to the commission, NASAA is an association of state securities regulators. Each senior administrator, commissioner, or director of a state agency that regulates securities is a participating and voting member of the organization. NASAA is membership driven and has an office in Washington, DC from which to monitor legislation on a national level, as well as to provide access for committees/working groups on particular issues of interest to state regulators. Through NASAA, multi-state projects, such as enforcement actions, are routinely coordinated. Policies are developed through NASAA committees for use by the states in order to promote uniformity. NASAA also acts as the clearinghouse for national examinations for investment adviser representatives and broker/dealer agents.

Commodities Futures Trading Corporation (CFTC) - The CFTC regulates commodities nationwide. Commodities and securities are closely related. According to the commission, the CFTC has worked with the Alabama Securities Commission on matters involving commodity pool sales in Alabama. Although the CFTC does not generally become involved in non-commodity matters, there is an overlap in the areas of licensing and product sales to the public. CFTC cases for enforcement and issues of registration routinely overlap the jurisdiction of the Alabama Securities Commission.

Federal Reserve/Comptroller of the Currency - According to the commission, the Alabama Securities Commission has contact with the Federal Reserve and the Comptroller of the Currency and other agencies involving banking and/or insurance activities generally relating to the sale of securities by banks.

Federal Trade Commission (FTC) - According to the commission, the Alabama Securities Commission has a very close relationship with the FTC, as the FTC is heavily involved with telemarketing/fraud solicitation activities. The Alabama Securities Commission claims that it is an acknowledged activist in the area of net surfing to address investment products offered through the internet, in telephone solicitations commonly called “cold calling,” in infomercials and in other forms of solicitation. The FTC, through NASAA, and with participation of the Alabama Securities Commission regularly holds surf days, conferences, meetings, exchanges of information and share a federal database maintained by the FTC.

Law Enforcement Coordinating Committee (LECC) - According to the commission, the Alabama Securities Commission maintains a relationship with the LECC, which is an organization of prosecutors organized through the U.S. Attorneys and the Department of Justice. Conferences and meetings are held regularly with U.S. Attorneys and staff in Alabama. Generally, the issues addressed involve bringing cases of securities fraud. The ASC assists the U.S. Attorney in investigations, subpoenas, searches and seizures, etc.

Regional Organized Crime Information Center (ROCIC) – According to the commission, ASC is a member of the Regional Information Sharing System (RISS). ROCIC regularly assists the ASC with nationwide tracing, background criminal activity, trial spread sheets, link charts, etc. Annual training programs are held jointly.

National White Collar Crime Center (NWCCC) – According to the commission, the Securities and Investigation Database (SID) is maintained by NWCCC under contract with NASAA for all state securities regulators, including Alabama. The SID database is a compilation of enforcement data from the 50 states, the District of Columbia and Puerto Rico. NWCCC also provides research, training, trial document preparation, etc.

The ASC also maintains regular contracts with such agencies as the **U.S. Postal Inspectors, B FBI, U.S. Customs, the IRS, the Manhattan District Attorney’s Office, et al.**

The ASC also routinely works with the following state agencies:

Department of Insurance – According to the commission, many securities agents hold insurance licenses and vice versa. The ASC maintains communication with the Department of Insurance with respect to agents who hold both licenses. The ASC transmits information to the Department of Insurance on ASC searches of the records of the Secretary of State or other records of a corporation’s involvement in insurance and securities activities that may require dual licenses. The Department of Insurance provides the ASC with information on complaints against insurance agents who may hold securities licenses.

Banking Department – According to the commission, banks continue to increase their business in securities and insurance. Consequently, there will be a greater need for exchange of information between banking and securities regulators. Securities activities on bank premises have been a difficult area to address. There is a current controversy between the Comptroller of the Currency, the Federal Reserve, the SEC and Congress concerning financial modernization. The issue of who controls; who oversees and who supervises the securities activities of banks is

an issue that has not been resolved. The ASC regulates activities of the securities subsidiaries of banks.

Alabama Development Office (ADO) – According to the commission, the ASC is the clearing house for industrial development bonds, as most industrial development boards in Alabama cannot issue bonds without having first received a certificate from the Alabama Securities Commission. The ASC notifies the ADO, as well as other agencies of state government of every application no-stop order regarding industrial development issues. At times, the ASC communicates with ADO, Industrial Relations, and other agencies about proposed plant construction and/or offerings.

FINANCIAL INFORMATION

Fund Structure

The commission operates through the State Treasury from the following funds:

- **Fund 374 - Sale of Checks Fund** – Fund 374 was established by the *Code of Alabama 1975*, Section 8-7-6, to accumulate license and investigation fees received from entities that engage in the business of selling, issuing, or dispensing checks or receiving money as agents for obligors for the purpose of paying obligors' bills, invoices or accounts. The fund is subject to the state's normal budgeting processes and must receive a legislative appropriation in order to disburse funds. The commission retains year-end balances.
- **Fund 375 - Alabama Securities Commission Fund** – Fund 375 was established by the *Code of Alabama 1975*, Section 8-6-3(h), to receive initial or renewal registration fees from investment advisers or investment adviser representatives, exempted securities filing fees, mutual fund exemption filing fees, interpretive opinions or no-action letter filing fees and assessment of investigative costs. The fund is subject to the state's normal budgeting processes and must receive a legislative appropriation in order to disburse funds. The commission retains year-end balances.
- **Fund 376 - Industrial Revenue Bond Fund** – Fund 376 was established by the *Code of Alabama 1975*, Section 8-6-115, to collect filing fees when issuing certificates of notification of industrial revenue bonds. The fund is subject to the state's normal budgeting processes and must receive a legislative appropriation in order to disburse funds. The commission retains year-end balances.
- **Fund 1042 - Securities Fraud Settlement Fund** – In the 2000 fiscal year, the commission received a series of court-ordered settlements from a case involving securities fraud. Funds received from the settlements were deposited into this fund. Fund balances were invested by the State Treasurer, with interest from the investments remaining in the fund. Upon completion of the case and liquidation of certain assets, the fund balance was transferred to victims named in the court ordered settlement. This fund has not been used since 2003.

Deposits to the General Fund

Unless otherwise specifically authorized, the *Code of Alabama 1975*, Section 8-6-33 requires all money collected by the Securities Commission to be deposited directly into the state's General Fund. The commission deposited the following collected amounts directly into the General Fund:

	2005/06	2004/05	2003/04	2002/03
Recording Fees	\$5,397,245.65	\$5,095,972.76	4,876,655.75	\$4,598,052.50
Fines and Forefeits	485,606.35	295,171.26	26,207.02	2,500.00
Total	\$5,882,852.00	\$5,391,144.02	4,902,862.77	\$4,600,552.50

Schedule of Fees

NOTE: SB797 was introduced in the 2007 legislative session to increase the licensing and registration fees for dealers, agents, investment advisers, representatives, and securities under the purview of the Alabama Securities Commission (See appendices). The bill did not become law.

FILING	DEFINITION	FEE	AUTHORITY
Notification	Generally available for seasoned issuers and requires limited disclosure.	\$40 filing fee plus registration fee of 1/10 of 1% of the aggregate offering price of the securities offered in this state. Registration fee not to exceed \$1000	(<i>Code of Alabama 1975</i> , Section 8-6-8(d))
Coordination	Registered statement has been filed in connection with the same offering. State filing in conjunction with SEC filing.	\$40 filing fee plus registration fee of 1/10 of 1% of the aggregate offering price of the securities offered in this state. Registration fee not to exceed \$1000	(<i>Code of Alabama 1975</i> , Section 8-6-8(d))
Qualification	Any other security.	\$40 filing fee plus registration fee of 1/10 of 1% of the aggregate offering price of the securities offered in this state. Registration fee not to exceed \$1000	(<i>Code of Alabama 1975</i> , Section 8-6-8(d))

Agent	Any individual, other than a dealer, who represents a dealer or issuer in effecting or attempting to effect sales of securities.	\$50	(<i>Code of Alabama 1975</i> , Section 8-6-3(h))
Dealer	Any person engaged un the business of effecting transactions in securities for the account of others or for his own account.	\$200	(<i>Code of Alabama 1975</i> , Section 8-6-3(h))
Investment Advisor	Any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or securities.	\$200	(<i>Code of Alabama 1975</i> , Section 8-6-3(h))
Investment Adviser Representative	Any partner, officer, director of or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who (a) makes recommendations or renders advice regarding securities; (b) manages accounts or portfolios of clients; (c) determines which recommendations or advice regarding securities should be given; (d) solicits, offers or negotiates for sale of or sells investment advisory services; and (e) supervises employees who perform any of the foregoing.	\$50	(<i>Code of Alabama 1975</i> , Section 8-6-3(h))
IDB	Industrial Revenue Bonds are municipal bonds issued for purpose of constructing facilities.	1/20 of 1% of principal amount of described bonds. No less than \$25, but not to exceed \$1,000	(<i>Code of Alabama 1975</i> , Section 8-6-115)

Sale of Checks	<p>Sale of any check, draft, money order, or other instrument for transmission or payment of Money</p> <p>(1) Investigative fee for initial application</p> <p>(2) Registration fee for principle Office</p> <p>(3) Additional location and agents in the state</p>	<p>\$250</p> <p>\$250</p> <p>\$5 (Max registration fee \$500, exclusive of investigative fee)</p>	<i>(Code of Alabama 1975, Section 8-7-6 and 8-7-9)</i>
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Determination of Exemption Fees			
(Securities not required to be registered because of exemption under federal, state, or provincial statutes.)			
FILING	DEFINITION	FEE	AUTHORITY
Limited Offerings	(1) Alabama ULOE	\$150	<i>(Code of Alabama 1975, Section 8-6-11(a)(14)(m)(4))</i>
	(2) D Regulation filing under Rules 505 and 506	\$250	<i>(Code of Alabama 1975, Section 8-6-11(c))</i> <i>Administrative Rule 830-X-6-.11(1)(a)(3)(iv)</i>
	(3) Expansion Order filing to increase the number of purchases in a limited offering that has already been exempted from registration.	\$250	<i>(Code of Alabama 1975, Section 8-6-11(c))</i>
	(4) For sale up to 35 Alabama purchasers in 12 months.	\$250	<i>Administrative Rule 830-X-6-.12(1)(d)(iv)</i>
	Extension of the term up to 12 months	\$150	<i>Administrative Rule 830-X-6-.12(1)(d)(iv)</i>

Mutual Funds	Registration exemptions for Open-End Management Investment Company		(Code of Alabama 1975, Section 8-6-11(b)(2))
	Total assets less than or equal to \$25 million	\$300 + \$40 new application fee	(Code of Alabama 1975, Section 8-6-10(11)(b)(2))
	Total assets greater than \$25 million, less than \$100 million	\$600 + \$40 new application fee	
	Total assets greater than \$100 million		
	Unit Investment Trusts	\$1,000 + \$40 new application fee \$200 + \$40 new application fee	
Other Fees			
PURPOSE	DEFINITION	FEE	AUTHORITY
Administrative Assessment	Fee imposed upon any person who violates any provision of the article or rule or order issued under the article.	Not to exceed \$5,000 for each act or omission. Total assessment not to exceed \$50,000	(Code of Alabama 1975, Section 8-6-19(j)(2)(5))
Investigative Examinations	Investigative costs for examinations of violations of any provision of the article or violations of any rule.	Actual costs of investigation	(Code of Alabama 1975, Section 8-6-19(k)(1)(2))
Opinion	Interpretations	\$150	(Code of Alabama 1975, Section 8-6-29)

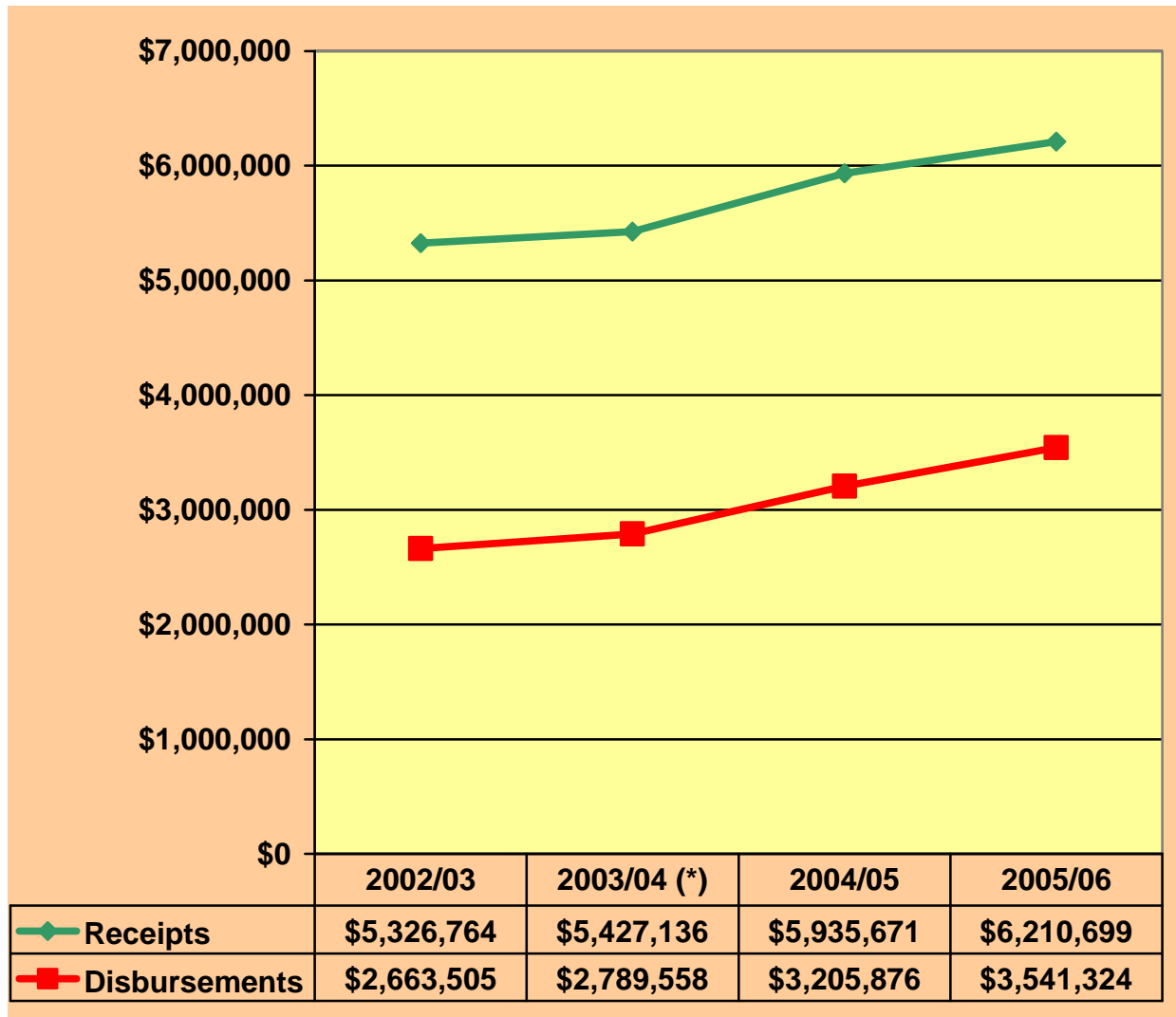
Schedule of Receipts, Disbursements, and Balances

For the Period October 1, 2002 through September 30, 2006

	<u>2005/2006</u>	<u>2004/2005</u>	<u>2003/2004</u>	<u>2002/2003</u>
<u>Receipts</u>				
Sale of Checks License Fees	\$ 48,465.00	\$ 25,540.00	\$ 29,880.00	\$ 23,340.00
Exemption Permit Filing Fees	5,576,700.00	5,433,007.42	4,984,140.00	4,928,570.00
Investment Advisor Registration Fees	409,750.00	368,700.00	338,200.00	323,050.00
Security Investment Fees (*)	151,202.88	80,002.57	4,938,004.11	24,665.23
Fees Not Otherwise Classified	3,426.00	1,903.00	2,696.75	830.50
Filing or Recording Fees	1,500.00	1,800.00	1,350.00	1,200.00
Buildings		6,516.71	6,469.75	7,775.16
Property Claim	1,700.00			
Salvage/Recycling	4,217.34	5,200.81	10.50	600.00
Industrial Revenue Bond Filing Fees	13,737.50	13,000.00	12,521.51	16,733.00
Total	<u>6,210,698.72</u>	<u>5,935,670.51</u>	<u>10,313,272.62</u>	<u>5,326,763.89</u>
<u>Disbursements</u>				
Personnel Costs	2,091,298.72	1,837,923.24	1,701,617.64	1,652,143.02
Employee Benefits	589,559.33	539,204.96	418,700.83	392,277.12
In-State Travel	30,385.35	18,100.54	14,887.75	13,245.49
Out-of-State Travel	36,335.51	30,921.61	29,679.83	16,587.53
Repairs and Maintenance	11,476.28	4,616.24	30,431.94	1,665.55
Rents and Leases	339,772.24	313,902.48	296,309.44	276,575.22
Utilities and Communication	40,547.31	36,161.77	34,343.29	31,370.93
Professional Services	163,145.04	164,967.51	63,626.79	32,422.57
Supplies, Maintenance, and Operating Expenses	95,917.92	109,604.81	110,456.61	120,624.08
Transportation Equipment Operation	37,112.95	28,424.07	20,525.30	16,803.27
Transportation Equipment Purchases	52,721.33	58,569.00	18,052.40	97,436.14
Other Equipment Purchased	53,052.89	63,480.74	50,926.49	12,353.88
Transfers to General Fund	1,500,000.00	10,500,000.00	2,500,000.00	2,500,000.00
Total	<u>5,041,324.87</u>	<u>13,705,876.97</u>	<u>5,289,558.31</u>	<u>5,163,504.80</u>
Excess of Receipts Over Disbursements	1,169,373.85	(7,770,206.46)	5,023,714.31	163,259.09
Cash Balances at Beginning of Year	<u>8,288,134.28</u>	<u>16,051,340.74</u>	<u>11,027,626.43</u>	<u>10,864,367.34</u>
Cash Balances at End of Year	9,457,508.13	8,281,134.28	16,051,340.74	11,027,626.43
Unpaid Obligations	<u>(126,585.39)</u>	<u>(186,403.51)</u>	<u>(149,347.80)</u>	<u>(119,429.98)</u>
Unobligated Balances	<u>\$ 9,330,922.74</u>	<u>\$ 8,094,730.77</u>	<u>\$ 15,901,992.94</u>	<u>\$ 10,908,196.45</u>

(*) [2003/2004 receipts classified as Security Investment Fees includes litigation settlement of \$4,886,137] According to Director Joseph Borg, A multi-state task force, of which Alabama was a lead state, joined with the U.S. Securities and Exchange Commission, the New York Stock Exchange, and the National Association of Securities Dealers, investigating certain equity research and banking practices of approximately eleven of the largest broker-dealer firms on Wall Street. This effort became known as the "Research Analyst Cases" and received widespread media attention. At the conclusion of the investigations, the firms entered into consent orders wherein each agreed to implement certain changes with respect to its equity research and banking practices. Alabama received a significant sum of fines, penalties, etc.

Operating Receipts Vs Operating Disbursements (Chart)



(*) Receipts amount does not include \$4,886,137 litigation settlement.

(All Years) – Transfers to the state’s General Fund not included in Disbursements.

QUESTIONNAIRES

Commission Member Questionnaire

A questionnaire was sent to all **seven** commission members. **Four** commissioners responded.

1. What are the most significant issues currently facing the Alabama Securities Commission and how is the Alabama Securities Commission addressing these issues?

1. Fraud & misrepresentation – investigative staff respond to complaints & police violations. 2. Senior citizen protection – education program.
2. Increasing complexity of products mean the ASC staff must continually be educated as well as educate the citizens of the state.
3. Ever increasing fraud against the elderly. As our population ages, the vast majority of wealth in this country is becoming vested in our senior citizens.
4. Complexity of products. Investor protection program. Fraud.

2. What changes to the Alabama Securities Commission's laws are needed?

1. Equity products, annuity/insurance. Policies need to be.
2. Violations need stiff enough to provide adequate deterrent.
3. Penalties for securities fraud need to be strengthened in order to more adequately punish violators for the detrimental impact of such crimes on their victims. Penalties need to provide significant deterrent effect against future violations.
4. Stiffer penalties for fraud.

3. Is the Alabama Securities Commission adequately funded?

4 Yes **0** No **0** Unknown **0** No Opinion

1. All the fees paid by securities industry

4. Is the Alabama Securities Commission is adequately staffed?

4 Yes **0** No **0** Unknown **0** No Opinion

5. What is the purpose of your fiscal year end balance of unobligated funds?

1. Operating reserve, revenues go up & down with economy.
2. To provide financing for Commission activities in years where Registration revenues are slow.
3. To ensure adequate funding in future years, in the case of market downturns and fluctuations which adversely affect the capital markets and decrease future revenue from licensing and registration.
4. Future funding.

Broker/Dealer Questionnaire

A questionnaire was sent to **100** broker/dealer licensees. **Fifty-five** broker/dealers responded.

- 1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?**

45 Yes 8 No 0 Unknown 2 No Opinion

- For firms not under NASD/SEC review, some level of regulation is necessary. ASC is not terribly effective.

- 2. Do you think any of the Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

9 Yes 32 No 6 Unknown 8 No Opinion

- They are uninformed & antiquated as they relate to many areas of the investment mrks & current best practice.

- 3. Do you think any of the Commission's requirements are irrelevant to the competent practice of your profession?**

13 Yes 24 No 9 Unknown 9 No Opinion

- 4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Commission positions, policies, rules and laws?**

17 Yes 18 No 12 Unknown 8 No Opinion

- Between yes & no. Would like to see email notices and changes automated similar to NASD.

- 5. Has the Commission performed your licensing and renewal in a timely manner?**

50 Yes 1 No 4 No Opinion

- 6. Do you consider mandatory continuing education necessary for competent practice?**

47 Yes 8 No 0 Unknown 0 No Opinion

- Not necessary given the requirements of the NASD.

7. Has the Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

27 Yes

4 No

16 Unknown

8 No Opinion

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the commission doing to address the issue(s)?

- Performance of financial advisory services related to raising financing by non-registered persons.
- Our company issues debt securities for not-for-profit organizations. The ‘unrestricted income’ requirements for debt service required by Alabama effectively eliminates this form of financing as an option for Alabama institutions.
- Identification of fraud, particularly on private investment activity.
- 1. The defrauding of unsophisticated investors. 2. The sale of unregistered securities at the retail level.
- Commission doing a very good job at keeping unregulated securities from being sold in Alabama.
- N/A
- Electronic filing; coordination of other states for a centralized system.
- No opinion
- When it comes to compliance rules and regulations one size does not fit all. Small firms should not be subject to unnecessary rules of larger firms.
- Compliance
- Annuity sales. They have conducted several seminars on this topic which I have found helpful and informative.
- Over regulation by multiple regulatory bodies. (Alabama Securities Commission, NASD, SEC Sarbanes-Oxley; etc.)
- Too much regulatory administrative requirements for small firms.
- I do not believe that most of the examiners themselves have adequate knowledge of the investment mkt's & instruments to fairly or adequately evaluate firm's finances. Regulation may become too burdensome; frivolous lawsuits from customers.
- No opinion
- Over regulation is biggest problem
- The issues that face this industry are not local issues
- No opinion
- The Alabama Securities Commission (and their counterparts in other states) is preoccupied with losses incurred by public investors. Little or nothing is done in the area of prevention. I know this because twice I have brought regulatory concerns about industry participants to the attention of the Alabama Securities Commission yet nothing was done by the Commission until investors lost money. What happen to “an ounce of prevention is worth a pound of cure?” The securities industry functioned well for years without continuing education but now it is mandated. The regulatory response to continuing education is that crooks need education and that the receipt of more will make them honest. That is categorically wrong. The Alabama Securities Commission cannot

legislate ethical behavior. As soon as an individual shows a total disregard for the regulations currently in place they should be barred from the industry. The Commission will institute lifetime bans on the small percentage of representatives and managers that disregard current regulation, there will not be a need to increase the regulatory burden on the remaining firms.

- Many life insurance carriers will not do business in Alabama.
- Dealing with & servicing senior citizens. Adoption of appropriate legislation for disclosure has been effective.
- Since our firm is based in TN & most of our regulations are national in scope, I cannot think of a significant issue that is peculiar

9. Do you think the Commission and its staff are satisfactorily performing their duties?

32 Yes

2 No

12 Unknown

9 No Opinion

- Very little contact. Nevertheless, I would encourage the Commission to focus on fraud and abuse issues, particularly among unregistered parties/persons over which the NASD may have no jurisdiction.

10. Has any member of the Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Commission service for you?

0 Yes

55 No

Investment Advisor Questionnaire

A questionnaire was sent to **100** investment advisor licensees. **Fifty-six** investment advisors responded.

1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?

48 Yes

7 No

1 Unknown

0 No Opinion

- The SEC can regulate the profession just fine.
- No, current regulations puts a burden on investment advisors who are willing to follow the rules. It seems like every week a scam is reported by the commission in which investors were defrauded. If the commission was truly attempting to protect the public welfare, it would be posing as novice investors and tracking down scammers, not maintaining its current business of aiding established firms comply with their regulatory paperwork.
- Enforcement capabilities are necessary.

2. Do you think any of the Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

19 Yes

28 No

4 Unknown

5 No Opinion

- In some cases.
- Compliance can be burdensome for small firms. Bonding is difficult to obtain and expensive. The cost of "Audited" financial statements is also prohibitive. Firms which do not have custody of client funds and only recommend listed securities do not require as much supervision as those which do otherwise.
- Some laws do not apply to individual RIA using money manager.
- Some are. For example, having audited financials is prohibitively expensive for smaller firms.
- Some, but they derive from Fed guidelines.
- As an independent fee-only financial planner who has neither custody assets nor has discretion or other control over clients I have spent too much time on compliance specifically no reason I should have to provide balance statements annually.
- Yes, surety bond requirement.
- Yes some of them are outdated.
- Yes, investment advisors are honest not because of regulation, but because of their own personal beliefs. In addition, market forces cut out dishonest advisors. Regulations are not currently designed to prevent or even look for investment scams. How do regulators find out about scams? People/investors reporting them to the commission. This should be the primary role of the ASC. It knows where the wheeler-dealers' can be found. They should focus their energies on finding scammers. Currently, reporting possible scams on

the ASC website is the only effective work the Commission does. The rest is just aiding advisors to comply with “paper trail” regulations they have created. I have spent more time dealing with regulations and needless paperwork than I have servicing clients. Over 30% of our costs to our business are because of the Securities Commission. This includes legal and accounting fees, and licensing costs. This does not include lost productivity or man-hours. Also we are a 1-person operation. Commission analyst freely admits most of their regulations are “non-sensical” for a 1 man operation. Yet they continue to apply them, placing a burden on (what should be) the fastest growing segment of the industry. The fact a 1 person firm is under the same regulations as a 500 person firm should show the Legislators that current regulations are not relevant to the majority of the industry. But truly, tracking down the unregistered fly-by-night hucksters should be the focus of the ASC.

3. Do you think any of the Commission’s requirements are irrelevant to the competent practice of your profession?

20 Yes 31 No 3 Unknown 2 No Opinion

- Some are unnecessary for very small firms.
- Some administrative requirements which might be necessary for large firms, e.g. “compliance manual” are not needed in my one-man operation.
- But you are necessary to keep problem advisors out of business.
- The Commission has not adopted their policies and procedures based on changes that have occurred in financial service industry. Specifically my firm does not manage assets, but offer financial planning services on an hourly basis. The Commission does not seem to understand these changes in the way professional are practicing and group all together.
- Yes. All but the requirement of a surety bond and an ADV brochure.

4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Commission positions, policies, rules and laws?

20 Yes 22 No 10 Unknown 4 No Opinion

- Periodic newsletter would probably be useful.
- I have not received any such correspondence but maybe that is because I am governed by the SEC.
- My experience in talking with other RIA is that the Commission is inconsistent in their positions and policies. When first registered/licensed client agreement information was approved, which later during an audit was determined not acceptable. In addition ADV Part II separate financial planners and investment advisors which the Commission dose not follow.
- No, unfortunately they have no email alert system. Man-hours are wasted trying to find and decipher their updates. Often securities lawyers have to be employed to describe the changes. More cost.

5. Has the Commission performed your licensing and renewal in a timely manner?

45 Yes

4 No

7 No Opinion

- Yes. This answer is based on fact that most or majority of my renewal process is timely. When it comes to submitting changes to the Commission, such as to agreements (client contracts) the process has been too lengthy. This was also the case during follow-up procedures for audit last year. More specifically it took 8 months for them to reply to my response letter.
- As an example of their incompetence I am registered with the SEC, not the state.
- Register w/fed – No contact with AL Commission.
- Licensing took over 2 months. A senior analyst had to be called to see what was taking so long. After this occurred, registration was granted in a week. So clearly there are some issues over in complying with the legislation.

6. Do you consider mandatory continuing education necessary for competent practice?

28 Yes

24 No

1 Unknown

3 No Opinion

- No, however, professional certification or degree should be required prior to registration.
- At some level, yes. However, if you don't stay current you will soon go out of business.
- There should be mandatory continuing education requirements for all RIA's with exception granted to CFP's or others who already have requirements.
- Not mandatory, but education is absolutely necessary.
- Yes however some licenses should be recognized for their requirement of continuing education that comes with the license.

7. Has the Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

19 Yes

4 No

19 Unknown

14 No Opinion

- This is not required for Investment Advisors.
- I am not aware of a requirement to report my CE to the ASC. I report biannually to the CFB Board.
- Didn't know that you have an approved list.
- None required.
- Continuing education is available to RIA's through our association with AIMR (Association for Investment Management & Research) but it is not mandatory.

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Commission doing to address the issue(s)?

- Unsuitability of investment recommendations. I think the commission is aggressively seeking ways to combat this.

- Rapid expansion of regulation across state, federal and SRO and the need consolidate and simplify regulation.
- Registered investment advisors need to be clearly distinct in the examiners eyes from financial planners and broker dealers. Many issues pertaining to the latter re not relevant to investment advisors per se.
- Professional competence and integrity. The Commission is monitoring and reacting to client complaints. While investment success is difficult to predict little is done to protect clients from ill advised advice.
- Numerous problems – 2 come to mind immediately (1) conflict of interest (2) suitability
- Issue 1) Compliance with laws & regulations. Commission addresses with audits. 2) Investor education. Commission addresses with newsletters & website news releases. 3) Fraud prevention. Commission addresses with legal action.
- The most significant issue is the volume of paperwork and change in NASD Rules & Regulations. You cannot rule or regulate morality. Laws will not stop people from being crooks.
- As a fee-basis advisor I think that commissions on the sale of mutual funds, stocks and other investments are not adequately presented to clients. A quarterly report of all commissions earned would level the playing field. I don't know if the Commission has a position on this.
- Stockbrokers pretending to be unbiased advisors. I have no idea what the Commission even thinks about that topic.
- Over regulation.
- Making the public aware of the difference between service providers. For example, stock brokers have a different license and do require continuing education while investment advisors have another license and the continuing education is required by their credentials such as CFP.
- I've been a registered financial planner for over 20 years. During this period I've had only one visit from the ASC. You need more staff and increase visit frequency.
- Misleading promises – I do think the Commission is trying to regulate this situation.
- The SEC will raise the minimum for registration meaning that more RIA will be State registered. I am concerned that the Commission does not have resources.
- Education to the public about the difference between brokers and RIA especially the “fiduciary” vs. “suitability” standard.
- Some crooks defrauding the public. Would prefer faster action but they are probably hampered by statute.
- Surety bond requirements & audited financial statements work hardship on very small and new advisors. For example, highly qualified advisors dealing with wealthy clients should be exempt from such requirements as long as they meet all other requirements.
- We feel that we should continue to be regulated by the Ala. Securities Commission as investment advisors (and not the SEC). At \$25 million of assets under management, the SEC takes over. We employ an investment & advisory firm in Atlanta to act as portfolio managers. They are audited by the SEC, who also counts our assets under management. So in fact, they are double counted. I don't know if any thing can be done about this. All in all, the Ala. Securities Commission has been very fair to us.

- Deceitfulness in sales and marketing practices. Lack of disclosure regarding commissions, expenses and fees.
- Protecting the public against unauthorized/unauthorized practices as investment advisors. I believe the Commission is doing a good job on this front.
- 1) Develop a competent staff. 2) Put energy into offenders, not legitimate practitioners.
- Lack of public information & unscrupulous sales practices. No opinion on Commission.
- The fox is guarding the henhouse i.e.: XXXXXXXX has no business being the vice chair man of the commission. It's a conflict of interest! XXXXXXXX too! They're CPA's.
- The difference between the 1934 Act and the 1940 Act. Advisors vs. brokers and their fiduciary responsibility to a client. I haven't seen where the State of Alabama has done anything on this issue.
- N/A
- 1) Burden of requirements on small IA firms. 2) Frequency of changes in process.
- Inappropriate investment products sold to investors, i.e. hedge funds to average investors, etc. Very little.
- We are regulated by the SEC.
- The reduction of regulation. The fact that Communist China has less regulation should be a very large red flag to the Alabama Legislators. Already we have seen a flight of capital out of New York, once the world financial capital, to London, Hong Kong and Shanghai. Alabama investment firms provide very high paying jobs to this state. They also provide investors with non-sales approach to investing. The industries' best advisors will always locate themselves in the lowest regulatory environment. Demopolis own XXXXX XXXX, one of the most successful investors in the world, is relocating to Asia. Legislators must ask themselves why Alabama cannot attract the top-talent and these high paying jobs.
- No comment.
- Banks licensing unqualified personnel to present to the public an image of superior planning. To my knowledge the commission is not addressing the issue.
- It is very difficult for small (1-2 persons) business to keep up with all the regs. I do not know what action is being taken to address this problem.
- The most significant issue is the ability of a sole proprietor to compete with the larger companies.
- To ensure reasonable regulation for small advisors.
- Broker Dealer exemption from registration.

9. Do you think the Commission and its staff are satisfactorily performing their duties?

37 Yes 4 No 11 Unknown 4 No Opinion

- I have been treated courteously but have spent needless time answering questions not relevant to my practice.
- Extremely competent, helpful and friendly.
- The staffs I've dealt with are all extremely courteous & helpful.

- Yes within what I have seen.
- I believe we have the best commission in the states. I am licensed in numerous states so I have experience with other commissions.
- The analysts we have worked with have been professional. Even they talk of the lack of common sense” in the regulations. They are carrying are carrying out the “business” of the Commission, which is to ensure firms are maintaining paperwork so that the Commission will stay relevant.

10. Has any member of the Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Commission service for you?

1 Yes

55 No

Sale of Checks Vendor Questionnaire

A questionnaire was sent to **100** sale of check vendor licensees. **Sixty-seven** sale of check vendors responded.

1. Do you think regulation of your profession by the Alabama Securities Commission is necessary to protect public welfare?

54 Yes **11** No **1** Unknown **1** No Opinion

- I think our industry – credit counseling – should be regulated. However, I don't know that it should necessarily fall under the Securities Commission to do that regulation.
- Non-profits should be excluded or subject to different regulations.
- If regulated by state of incorporation.
- No opinion, however, we support consumer protection regulation of credit counseling agencies.
- Should be the Dept. of banking or finance.

2. Do you think any of the Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

5 Yes **55** No **3** Unknown **4** No Opinion

- As a non-profit
- They are misapplying check sellers statute to debt management companies.

3. Do you think any of the Commission's requirements are irrelevant to the competent practice of your profession?

10 Yes **46** No **6** Unknown **5** No Opinion

- Again, assurance of adequate insurance & bond is necessary for all, but non-profits lumped in with for-profit should be looked at.

4. Are you adequately informed by the Alabama Securities Commission of changes to and interpretations of Commission positions, policies, rules and laws?

38 Yes **16** No **6** Unknown **7** No Opinion

- I have not received any information that I'm aware of relative to changes in policies, etc.
- Yes although no recent changes reported.
- We review regulations ourselves periodically.
- Do not receive mailings or updates. Even our renewal form is not mailed, we must download it. Email reminders would be great.
- We are unaware of any changes that have been made since our licensure.

- Not informed of changes in rules and they assess penalties. That is wrong.

5. Has the Commission performed your licensing and renewal in a timely manner?

62 Yes

3 No

2 No Opinion

- I was disappointed the 1st time we obtained a license. There was/is a law stating credit counseling organizations must be licensed. Apparently this had never been investigated nor was it followed. In August of 2005, the Securities Commission chose to sue all organizations that did not have a license. It seems like it would have been much simpler & cost effective to send a letter to all credit counseling organizations asking them to apply for the license. In addition, the licensing process then took nearly 6 months to complete. The renewal process was much better.
- Once the renewal is submitted it is processed in a timely manner, however, no notice of renewal s sent out. in other states in which we conduct business a renewal notification and applicable paperwork is sent approximately a month beforehand. (This comment applies to sale of check licensees.

6. Do you consider mandatory continuing education necessary for competent practice?

28 Yes

19 No

5 Unknown

15 No Opinion

- Our continuing education is done through Certification of Counselors – they maintain their certification by obtaining PDU's (professional development units).

7. Has the Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

10 Yes

0 No

35 Unknown

22 No Opinion

- I have no idea what sorts of continuing education options are available through the Securities Commission. We obtain our continuing education elsewhere.
- Does not apply – sale of checks
- No such list has been provided.

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Commission doing to address the issue(s)?

- Fraudulent money orders – not sure of what is being done.
- 1. Public trust and confidence and integrity of service providers. 2. Establishing, maintaining, & enforcing standards for licensing & renewals.
- Debt management has nothing to do with sale of checks
- No opinion
- I am required to purchase a "Sale of Checks" license for \$250.00. It is confiscating – I am already a licensed pharmacy. I could see doing it if I was not licensed in another regard.

- 1. Public trust and confidence and integrity of service providers. 2. Establishing, maintaining, & enforcing standards for licensing & renewals.
- Most significant issue is the lack of uniform laws governing debt management services in the United States. I would like to see Alabama and other states adopt uniform laws with similar requirements to make compliance easier.
- The credit counseling industry probably needs a bit more regulation although on a national level the IRS and Federal are doing a pretty good job in making this happen. I would like to see laws passed regarding maximum fees that could be charged by members of our industry.
- 1-800 credit counseling organizations who are not members of any accrediting body, charging large fees to the public.
- I have only been on the job for two weeks therefore, I cannot, in all fairness, make relevant comments.
- No opinion
- The Commission does an excellent job.
- I think the Commission is doing a good job.
- Bank accounts are not accessible to MSB's
- Awareness of the statutes that regulate the credit counseling services. Commission could provide better notification to organizations of the regulatory requirements in Alabama for specific services with website.
- Have not been in business with Alabama long enough to have an opinion.
- Keeping the states and state regulators current on industry practices in stored value and money transmission.
- To overcome some of the negative connotations connected with credit counseling. Hopefully the State of Alabama will work with companies such as ours to effectively communicate the positive aspects of credit counseling both to consumers (and the general public) as well as to creditors.
- Your law does not restrict licensing to only non-profits. I don't think you have a cap on the fees that can be charged to consumers. I cannot speak to what your Commission is doing to address the issue, but the most significant issues facing our profession in Alabama and in all states, is the increase in unscrupulous for-profit companies getting into the debt management business, as a way to charge exorbitant fees to consumers during their most vulnerable periods – financial distress. Our experience has been that when families are faced with financial problems, with each day bringing a new crisis, they will believe anyone who promises to throw them a lifeline, and they will pay anything for that help. So, some of the measures that other states have taken to protect their residents are missing from Alabama law: Your law does not limit approval of licenses only to non-profit organizations. For-profit corporations can become licensed in your state. Also, you have no mention of the fee schedule or a cap on fees that can be charged to residents of your state. Most states have a cap of \$30 - \$50 per month that can be charged; with wording in the law that forbids requiring any other fee, or receiving any other type of "contribution". Many companies, as a way to get around the law on the maximum fee they can charge, have requested large "contributions" of \$200 or more. Sometimes, their "contribution" has been the first payment. The consumer believes he is making a payment to his creditors, and

instead that the first fee is held by the licensed organization as their “start up contribution”. Several states have taken action against organizations utilizing these types of practices, and have been successful in closing down some of them. Your bond amount of \$10,000 is extremely low, compared to other states, and I would recommend increasing it to at least \$25,000; but \$50,000 or \$100,000 would not be out of line compared to other states. As another way to protect Alabama residents, you might consider requiring licensing of any company that is approved in Alabama to provide mandatory pre-filing bankruptcy counseling, or mandatory pre-discharge education. These firms will be dealing with Alabama families who are either beginning the bankruptcy process, or trying to discharge their bankruptcies, and they should be required to comply with our laws regarding the handling of consumer funds. Again, thank you for asking for my opinion of your regulations – I have probably given you more than you wanted.

- Most significant issue nationwide is heightened IRS scrutiny. This issue is beyond the Commission to address.
- Compliance with a home state sale of checks law(s) and regulations would suffice if the business maintains a safe and sound performance of this public service. Multiple conflicting state requirements do not enhance business performance. No information on what Commission is doing to address this yet.
- We are a money remittance company.
- None
- As a debt management agency we feel strongly that non-profits only should be licensed.
- Bank closures of MSB clients
- N/A
- Commission can seek greater diligence in investigating and taking appropriate action against unlicensed debt management service providers.
- Unlicensed providers of credit counseling services, under the check seller regulations, to the citizens of Alabama. We are unaware of the Commissions current efforts to identify those providers and enforce the rules and regulations.
- The most significant issue we face as an MSB is the closure of our agents’ bank accounts. Many banks have deemed our business as high risk and do not want to open service or maintain these accounts for our agents. Since this issue may be outside the Commission’s scope of control, we are not aware if it has been addressed.
- No issues are currently outstanding.
- No significant issues in Alabama.
- Sale of check licensing is pretty much irrelevant to debt management.
- No Opinion
- Most significant issue – banking services. Many banks are arbitrarily denying services to MSBs without consideration for the level of compliance of the MSB. If continued, this trend will drive money transfers underground where there will be no transparency. Possible mitigating requirement – require the bank to submit an explanation to the banking commission as to the reason it denied it denied banking services to the MSB.

- This statute does not apply to credit counseling.
- No issues currently.
- Increase allowable fees.
- No opinion/comment
- None at this time.
- There is need for uniform nationwide regulation. No state should solely monitor the profession.
- Fraudulent credit counseling agencies. They are looking for credit counseling agencies that are not registered in the state so that this problem can be eliminated.
- The most significant issue facing the credit counseling industry is the unscrupulous companies create a negative image for those companies who do try to help people.
- Frivolous lawsuits. It is unknown what the Commission is doing to address this issue.
- Don't say licenses are not necessary for debt management and change opinion retroactively and threaten litigation and assess penalties.

9. Do you think the Commission and its staff are satisfactorily performing their duties?

56 Yes

1 No

6 Unknown

4 No Opinion

- Yes compared to some other states.
- I think more communication, even if electronic, would be great. (Reminders of filing requirements & renewals)

10. Has any member of the Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a Commission service for you?

1 Yes

66 No

Complainant Questionnaire

A questionnaire was sent to **sixty-nine** complainants. **Twenty-five** complainants responded.

1. Was your complaint filed with the Alabama Securities Commission by:

7 Mail 11 Phone 5 Fax 0 Other 0 Unknown

- I did not file the complaint. It was filed by a bank in my name.
- There must be a mistake, I know of no complaint.

2. Was receipt of your complaint acknowledged?

21 Yes 2 No 0 Unknown 2 No Response

- By phone call as I remember

If yes, approximately how long after you filed your complaint were you contacted by the Commission?

7 Immediately 4 Within 10 days 1 Within 20 days
3 Within 30 days 1 More than 30 days 5 Unknown

3. Was the employee who responded to your complaint knowledgeable and courteous?

3 Knowledgeable 2 Courteous 1 Neither 15 Both

4. Did the Alabama Securities Commission communicate the results of investigating your complaint to you?

13 Yes 8 No 1 Unknown 3 Did Not Answer

- I was told by a relative who knew the individual being investigated.

5. Do you think the Commission did everything it could to resolve your complaint?

11 Yes 2 No 9 Unknown 3 Did Not Answer

6. Were you satisfied with your dealings with the Alabama Securities Commission?

14 Yes 3 No 5 Unknown 3 Did not Answer

APPENDICES

SMART Budgeting Reports

State of Alabama
EBO Form No. 4b

ALABAMA SECURITIES COMMISSION
FY 2005-2006 SMART OPERATIONS PLAN

Agency No. 336
Page 1 of 3

AGENCY	ALABAMA SECURITIES COMMISSION	ACTUAL FY04	BUDGET FY05	BUDGET FY06
PROGRAM	041 Regulatory Services			
ACTIVITY 1	0029 Securities Regulation	5,364,731	15,013,481	6,385,521
	Budget without transfer to General Fund	4,116,488	4,513,481	4,885,521
MISSION	To administer and enforce laws governing the registration of broker dealers, broker dealer agents, investment advisers, investment adviser representatives, and the issuance, sale and other transactions relative to securities, investments and sale of checks. (Ala. Code Sec. 8-6-50 to 8-6-60) (Governor's Priority, 1)			
VISION	An investment community that serves the people of Alabama without fraud or abuse and preserves Alabama's capital markets.			
VALUES				
GOALS	To ensure that only qualified investment professionals conduct business in Alabama by maintaining licensing standards, conducting audits and examinations and evaluating non-exempt securities offerings, including pre-clearance of industrial development bonds and sale of check filings.			
	To review and investigate complaints from citizens and potential violations of the Alabama Securities Act, and, where evidence warrants, bring Administrative, Civil or Criminal enforcement actions.			
	To provide Alabama citizens financial education programs and information to protect savings, investments, retirement pensions and other assets and enhance personal finance skills.			
	To maintain current information on all investment professionals and provide such information upon request to the public.			
WORKLOAD	Annual registration, licensing and exemption applications continue to exceed 100,000 per year	99984	101883	105500
	Increase number of audits and examinations conducted	33	36	38
	White collar crime in the investment field will continue to increase	115	134	140
CRITICAL ISSUES				
Internal	Maintain adequate continual training and professional development in licensing, auditing, law enforcement, investment products and industry development.			
	Maintain continual upgrade of technology, computer forensics, and financial analysis techniques.			
	Consider improved data capturing capabilities through database enhancements and potential use of optical scanning.			
	Maintain adequate staff to timely handle increases in licensing, registrations, investigations, legal matters and financial education.			
External	Passage of the Gramm, Leach, Bliley bill caused overlaps of securities, banking and insurance industries and requires additional registration/licensing resources for review and monitor due to unfunded federal mandates.			
	Enactment of NSMIA in 1996 removes federal review and requires the states to dedicate additional personnel and resources to the sole regulation of those Investment Advisers with assets under management of less than \$25 million.			
	Passage of the U.S. Patriot Act necessitates additional human resources and advanced technology in order to fulfill requests from Homeland Security for applicant reports.			
	Passage of the Sarbanes Oxley Act necessitating appropriate company disclosures requires additional file review.			
	Possible changes in the Uniform Securities Act could potentially weaken state securities laws of certain investments and cause potential reduction in licensing revenues			

	The Commission is challenged to reach a larger portion of existing Alabama citizens and a growing population each year.			
	Current shift in federal resources by the SEC, Federal Bureau of Investigation, Postal Service, Department of Homeland Security, the Department of Justice and International Securities Regulators toward terrorist and corporate fraud requires the states to dedicate greater resources to the investigation of securities fraud and white collar crime cases, many of which are highly complex.			
	Due to the shift of priorities by Federal law enforcement to terrorist activities the states now bear a greater burden of detecting, investigating and prosecuting while collar crime and fraud in the market place.			
	Current practice of transference of statutorily dedicated agency funds by the Legislature causes funding uncertainty and legal controversy.			
	Judicial system delays in bringing enforcement cases to court.			
OBJECTIVES				
Spending	To limit agency budget request to no more than +8% over 2005-06 approved budget for the next 3 years, subject to market economy and unusual financial fraud investigations.	4,116,488	4,513,481	4,885,521
Staffing	Maintain current approved positions subject to filling current vacant positions. (No. of FTE Staff)	36.14	55	55
Efficiency	Reduce initial review time for standard applications by 10%	-----	-----	-----
	Reduce response time for all requests for in-house public information to within 30 day time frame. (Avg # days)	-----	30	30
	Reduce time required to conduct routine investment adviser on-site examinations by streamlining the audit process. (Avg hours)	-----	16	16
	Reduce time required to produce routine final audit report by utilizing Northern American Securities Administrators Association's Electronic Exam Module. (Avg days)	-----	14	14
Quality	Maintain the quality of the Commission's 95%+ conviction rate.	95% +	95% +	95% +
	Maintain 5 business day initial response time to all complaints filed with Commission. (# days)	5	5	5
STRATEGIES	Aggressively investigate and prosecute securities fraud cases by forming alliances with other securities regulators and law enforcement agencies.			
	Continue to update and train investigative staff to identify new fraud schemes			
	Increase the volume of routine and anticipated for-cause audits.			
	Review industry trends to identify potential problem areas to prevent abuses in the securities markets.			
	Improve efficiency of audit program by utilizing the highest levels of technology available.			
	Prioritize firms to be audited according to set parameters.			
	Provide continuous in-house and outside industry and regulatory training for professional staff.			
	Cross train all professional staff on auditing and licensing procedures.			
	Establish and maintain accurate auditing database.			
	Devote more resources to the review of applicants with potential industry problems as disclosed through the CRD/IARD system.			
	Identify applicant violations and follow up with legal, enforcement and auditing divisions.			
	Identify registration issues or potential market problems and trends through media alerts, publications and discussion with registration staff of other State Securities Agencies.			

Provide continued cooperation and support to auditing and enforcement divisions.			
Maintain constant communication with other states for National Database upgrades, i.e. CRD forums, CRD/IARD forums.			
Create an efficient registration/licensing unit with minimal errors			
Cross check all CRD/IARD data with STAR records to ensure accurate records.			
Provide continuous internal and external training to keep staff current of all industry trends and problems.			
Network with the Jump\$tart Coalition, Department of Education, other government agencies and businesses to reduce the cost of educating each person by combining resources; at the same time educating 5% more citizens each year.			
Continually research, rewrite, and print better educational materials to teach the citizens of Alabama.			
Improve methodologies to promote learning.			
Continue to seek more efficient methods for processing registration filings and enforcement cases.			

Smart Quarterly Performance Report

Fiscal Year: 2006

Agency: 336 Securities Commission

Org:

Program: 041 REGULATORY SERVICES

Activity:

Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Workload/Cost Factor	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
WC1: Annual registration, licensing & exemption applications continue to exceed 100,000 per year	# of apps	6,000	6,983	83,200	89,137	8,600	8,921	7,700	7,244	105,500	112,285
WC2: Increase number of audits and examinations conducted	# of audits	10	11	10	13	10	12	10	11	38	47
WC3: White collar crime in the investment field will continue to increase	# of cases	35	41	35	54	35	23	35	48	140	166
Spending	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
SP1: Limit budget request to no more than 8% over previous year	\$	1,862,370	1,862,370	1,486,389	1,486,389	1,669,896	1,669,896	1,366,866	1,366,866	6,385,521	6,385,521
Staffing	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
ST1: Maintain current approved positions	# of FTE	55	55	55	55	55	55	55	55	55	55
Efficiency	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
EF1: Maintain initial review times for standard applications	"	0	Avg days 5.3	0	5.9	0	6.67	0	5.82	0	5.92
EF2: Maintain response time for all requests for in-house public information	Avg. days	30	19	30	4	30	4.19	30	4.875	30	8.02
EF3: Maintain current time required to conduct on-site IA audit	Avg. hrs.	16	14	16	14.4	16	14.9	16	14	16	14.3
EF4: Produce routine IA audit reports in allotted time frame	Avg. days	14	13.5	14	9.95	14	10.3	14	12.7	14	11.6
Quality	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
QU1: Maintain conviction Rate	%	95	see note	95	100	See Below	See Below	0	100	0	100
QU2: Maintain complaint response time	# days	5	see note	5	2.6	5	2	5	2.3	5	2.3

2007 SMART Operations Plan

Agency/ Org	336 - Securities Commission
Organization	-
Program	041 - REGULATORY SERVICES
Activity	-

Mission	To administer and enforce the laws governing the investment community in the offering of securities
Vision	An investment community that serves the people of Alabama without fraud or abuse and preserves Alabama's capital markets
Values	Protect the investing public, Preserve capital markets, Continually identify potential investment scams, Be responsive to inquires and complaints, Educate investing public, and Maintain appropriately trained staff.

Goals

- G1: Maintain licensing standards to ensure only qualified investment professionals conduct securities business in Alabama. (GP-1)
- G2: Accurately and efficiently investigate potential securities violations and bring appropriate enforcement actions. (GP-1)
- G3: Enhance citizen financial awareness. (GP-1)
- G4: Safeguard and enhance Agency revenue. (GP-1)

Critical Issues

- Internal** ICI1: Maintain adequate staff to timely process increases in licensing, registrations, investigations and legal matters (G1)
- Internal** ICI2: Maintain adequate continual training and professional development in licensing, auditing, law enforcement, investment products and industry development (G1)
- Internal** ICI3: Maintain continual upgrade of technology, computer forensics, and financial analysis techniques (G2)

- External** ECI1: The ability to leverage resources in multi-jurisdictional cases (G2)
- External** ECI2: Current practice of transference of statutorily dedicated agency funds by the Legislature causes funding uncertainty and legal controversy (G4)
- External** ECI3: Judicial and prosecutorial systems' financial crisis causing delays in criminal trials (G2)

Strategies

- 1). Identify registration issues or potential market problems and trends and devote resources to the review of applicants with significant disciplinary action. (G1)
- 2). Increase the volume of routine audits and prioritize firms to be audited in accordance to set parameters. (G1)
- 3). Aggressively investigate potential securities violations by maintaining alliances, updating and training investigative staff and providing continued cooperation between all internal divisions. (G2)
- 4). Networking with government agencies and private businesses to leverage the cost of educating the investing public (G3)
- 5). Update investment materials and improve presentation techniques to promote investor education throughout the state (G3)
- 6). Accurately collect licensing, registration and exemption fees and enforcement fines in accordance with the Securities Act utilizing the highest levels of technology available (G3)

2007 SMART Operations Plan

Workloads							Performance Indicator
Annual registration, licensing and exemption applications continue to exceed 100,000 per year							# applications
FY 07 Projected: 111,700							FY 07 Target: 110,000
FY07 Quarterly Projections:	1 st Qtr:	6600	2nd Qtr:	86900	3 rd Qtr:	8800	4 th Qtr: 7700
White collar crime in the investment field continues to increase							0
FY 07 Projected: 0							FY 07 Target: 145
FY07 Quarterly Projections:	1 st Qtr:	36	2nd Qtr:	37	3 rd Qtr:	36	4 th Qtr: 36
Increase number of routine audits and examinations conducted							# of audits
FY 07 Projected: 33							FY 07 Target: 34
FY07 Quarterly Projections:	1 st Qtr:	10	2nd Qtr:	8	3 rd Qtr:	8	4 th Qtr: 8

Objectives							Performance Indicator	
Spending	To limit agency budget request to no more than +8% over 2005-06 approved budget for the next 3 years, subject to market economy and unusual financial fraud investigations						% increase	
FY 07 Projected: 0.05							FY 07 Target: 5%	
FY07 Quarterly Projections:	1 st Qtr:	2%	2nd Qtr:	18%	3 rd Qtr:	-10%	4 th Qtr:	16%
	Above objective does not include the transfer to the State General Fund or 5% COLA						Actual transfer and budgeted COLA amount	
FY 07 Projected: 0							FY 07 Target: 1,652,226	
FY07 Quarterly Projections:	1 st Qtr:	415078	2nd Qtr:	405504	3 rd Qtr:	415691	4 th Qtr:	415953
Staffing	Maintain current approved positions subject to filling current vacant positions						approved positions	
FY 07 Projected: 55							FY 07 Target: 55	
FY07 Quarterly Projections:	1 st Qtr:	55	2nd Qtr:	55	3 rd Qtr:	55	4 th Qtr:	55
Efficiency	Maintain initial review time for standard applications in conformance with statute						average days	
FY 07 Projected: 20							FY 07 Target: 20	
FY07 Quarterly Projections:	1 st Qtr:	20	2nd Qtr:	20	3 rd Qtr:	20	4 th Qtr:	20
	Maintain initial response time for all requests for national database/inquiries for public information to within 30 day time frame						average days	
FY 07 Projected: 30							FY 07 Target: 30	
FY07 Quarterly Projections:	1 st Qtr:	30	2nd Qtr:	30	3 rd Qtr:	30	4 th Qtr:	30
	Maintain current time required to conduct routine investment adviser on-site examinations by streamlining the audit process						average days (previously reported in hourly increment)	

2007 SMART Operations Plan

FY 07 Projected: 16		FY 07 Target: 2						
FY07 Quarterly Projections:	1 st Qtr:	2	2nd Qtr:	2	3 rd Qtr:	2	4 th Qtr:	2
Efficiency	Produce routine investment adviser audit reports within allotted timeframe by utilizing North American Securities Administrators Association's Electronic Exam Module						average days	
FY 07 Projected: 14		FY 07 Target: 14						
FY07 Quarterly Projections:	1 st Qtr:	14	2nd Qtr:	14	3 rd Qtr:	14	4 th Qtr:	14
Quality	Maintain the quality of the Commission's 95%+ conviction rate						percentage	
FY 07 Projected: 0		FY 07 Target: 95%						
FY07 Quarterly Projections:	1 st Qtr:	95%	2nd Qtr:	95%	3 rd Qtr:	95%	4 th Qtr:	95%
	Maintain a 5 business day initial response time to all complaints filed with the Commission						# of days	
FY 07 Projected: 0		FY 07 Target: 5						
FY07 Quarterly Projections:	1 st Qtr:	5	2nd Qtr:	5	3 rd Qtr:	5	4 th Qtr:	5

2007 SMART Operations Plan

Source of Funds			
Fund Code	Fund Name	Requested FY 07	Budgeted FY 07
0374	Sale of Checks Fund	\$20,000	\$20,000
0375	Securities Commission Fund	\$5,098,737	\$5,250,963
0375	Transfer to State General Fund	\$0	\$1,500,000
0376	Industrial Revenue Bond Notification Fund	\$20,000	\$20,000
Total of all Funds Listed Above:		\$5,138,737	\$6,790,963

Code of Alabama 1975, Sections 8-6-1 through 8-6-122

CHAPTER 6. SECURITIES.

REFERENCES

CROSS REFERENCES

As to any activity subject to this chapter being exempt from the Deceptive Trade Practices Act, see § 8-19-7.

ANNOTATIONS

CASENOTES

Relation to federal law 1

1. Relation to federal law

Cited in Alabama Bancorporation v. Henley, 465 F.Supp. 648 (N.D.Ala.1979).

For federal case construing Rule 10b-5 of the securities and exchange commission, (17 C.F.R. § 240.10b-5 (1981)) which is virtually identical to § 8-6-17, see Buffo v. State, 415 So.2d 1158 (Ala.1982), on remand 415 So.2d 1167.

Section similar to Rule 10b-5 of securities and exchange commission. Section 8-6-17 is identical in all respects, other than the insertion of the word "offer," and that which is necessary to a delineation between the area of sovereignty of Alabama and that of the United States to Rule 10b-5 of the securities and exchange commission, (17 C.F.R. § 240.10b-5 (1981)). Therefore, since there are few Alabama cases construing the Alabama securities laws, federal cases should be reviewed to aid in the proper interpretation of the corresponding sections of Alabama statutory law inasmuch as the sections are virtually identical. Buffo v. State, 415 So.2d 1158 (Ala.1982), on remand 415 So.2d 1167.

ARTICLE 1. GENERAL PROVISIONS.

REFERENCES

TABLE OF JURISDICTIONS WHEREIN 1956 ACT HAS BEEN ADOPTED

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	1959, p. 1318	1-1-1960	Code 1975, §§ 8-6-1 to 8-6-33.
Alaska	1959, c. 198	5-9-1959	AS 45.55.010 to 45.55.955.
Arkansas	1961, Act No. 248	7-1-1959	A.C.A. §§ 23-42-101 to 23-42-509.

Connecticut	1977, P.A. 77-482	6-29-1977 [FN*]	C.G.S.A. §§ 36b-2 to 36b-33.
Delaware	59 Del.Laws, c. 208		6 Del.C. §§ 7301 to 7330.
District of Columbia [FN3]	D.C Law 13-203	10-26-2000	D.C. Official Code, 2001 Ed. §§ 31-5601.01 to 31-5608.04.
Hawaii	1957, Act 314	6-7-1957	HRS §§ 485-1 to 485-25.
Indiana	1961, c. 333	7-1-1961	West's A.I.C. 23-2-1-1 to 23-2-1-27.
Kansas [FN4]	1957, c. 145	7-1-1957	K.S.A. 17-1252 to 17-1275.
Kentucky	1960, c. 110	1-1-1961	KRS 292.310 to 292.550, 292.991.
Maryland	1962, c. 1	6-1-1962	Code, Corporations and Associations, §§ 11-101 to 11-805.
Massachusetts	1972, c. 694	1-1-1972	M.G.L.A. c. 110A, §§ 101 to 417.
Michigan	1964, No. 265	1-1-1965	M.C.L.A. §§ 451.501 to 451.818.
Minnesota	1973, c. 451	7-1-1973	M.S.A. §§ 80A.01 to 80A.31.
Mississippi	L.1981, c. 521	7-1-1981	Code 1972, §§ 75-71-101 to 75-71-735.
Montana [FN2]	1961, c. 251	7-1-1961	MCA 30-10-101 to 30-10-308.
Nebraska	1965, c. 549	8-18-1965	R.R.S. 1943, §§ 8-1101 to 8-1123.
New Hampshire	1981, c. 214	1-1-1982	R.S.A. 421-B:1 to 421-B:34.
New Jersey	1967, c. 93	7-1-1967	N.J.S.A. 49:3-47 to 49:3-76.
North Carolina	1973, c. 1380	4-1-1975	G.S. §§ 78A-1 to 78A-66.
Oregon	1967, c. 537		ORS 59.005 to 59.451, 59.991, 59.995.
Pennsylvania	1972, P.L. 1280, No. 284	1-1-1973	70 P.S. §§ 1-101 to 1-704.
South Carolina	1961, p. 185	4-14-1961	Code 1976, §§ 35-1-10 to 35-1-1590.
Utah [FN1]	1963, c. 145	3-21-1963	U.C.A.1953, 61-1-1 to 61-1-30.
Virginia	1956, c. 428	1-1-1957	Code 1950, §§ 13.1-501 to 13.1-527.3.
Washington	1959, c. 282	3-24-1959	West's RCWA 21.20.005 to 21.20.940.
West Virginia	1974, c. 128	6-7-1974	Code, 32-1-101 to 32-4-418.
Wisconsin	1969, c. 71	1-1-1970	W.S.A. 551.01 to 551.69.
Wyoming	1965, c. 160	3-1-1965	Wyo.Stat.Ann. §§ 17-4-101 to 17-4-131.

FN[FN*] Date of approval.

FN[FN1] Note that U.C.A.1953, 63-55-261, provides that Chapter 1, Title 61,
terminates on July 1, 2009.

FN[FN2] The Montana act contains many of the major provisions of both the
1956 and 1985 Uniform Securities Acts. Accordingly, the citation of the
Montana act is set forth in the tables for both acts. See General Statutory
Note, post.

FN[FN3] The District of Columbia act contains many of the major provisions of

both the 1956 and 1985 Uniform Securities Acts. Accordingly, the citation of the District of Columbia act is set forth in the tables for both acts. See General Statutory Note, post.

FN[FN4] Kansas repeals the provisions of the 1956 Uniform Securities Act and enacts the 2002 Uniform Securities Acts effective July 1, 2005. Accordingly, Kansas will be carried in the tables for both acts. See General Statutory Note, post.

CROSS REFERENCES

As to investment securities, see § 7-8-101 et seq.

As to securities of telephone companies, see § 37-2-170 et seq.

As to tax for recordation of lists of securities with department of revenue, see § 40-24-1 et seq.

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-2-.01 et seq., Securities Commission; General Rules.

21 Ala. Admin. Code 830-X-3-.01 et seq., Securities Commission; Registration of Dealers, Agents, Investment Advisers and Investment Adviser Representatives.

21 Ala. Admin. Code 830-X-4-.01 et seq., Securities Commission; Registration of Securities.

ANNOTATIONS

CASENOTES

Construction and application 1

1. Construction and application

Cited in Upton v. Trinidad Petro. Corp., 652 F.2d 424 (5th Cir.1981); Graddick v. State, 408 So.2d 533 (Ala.Crim.App.1981).

This chapter was not designed to encompass a conventional franchise agreement, wherein the promoter exercises merely remote control over the franchisee and the franchisee conducts his business independently from the promoter. Burke v. State, 385 So.2d 643 (Ala.Crim.App.1979), affirmed 385 So.2d 648.

Enforcement provisions of chapter are applicable only if financial arrangement involved is a security. Burke v. State, 385 So.2d 643 (Ala.Crim.App.1979), affirmed 385 So.2d 648.

§ 8-6-1. Short title. [References](#)

This article may be cited as the "Alabama Securities Act."
(Acts 1959, No. 542, p. 1318, § 22; Acts 1990, No. 90-527, p. 772, § 1.)

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C.J.S. Securities Regulation § 368.

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Alabama Corporation Law with Forms § 3:4, The Corporate "Contract" and Corporate Legal

Norms.

Alabama Corporation Law with Forms § 2:18, Corporations Formed to Conduct an "Active" Business.

Alabama Corporation Law with Forms § 3:55, Organizational Meeting of Directors: Items of Business.

Alabama Corporation Law with Forms § 10:19, Breach of Duty Through Other Forms of Interested Conduct.

Treatises and Practice Aids

Alabama Personal Injury and Torts § 12:6, Deceptive Trade or Business Practices.

Alabama Personal Injury and Torts § 10:15, Deceptive Trade or Business Practices.

Bogert - the Law of Trusts and Trustees § 248, Trusts Used Primarily for Business Purposes: Investment Trusts and Real Estate Investment Trusts.

§ 8-6-2. Definitions. [Historical Notes](#) [References](#) [Annotations](#)

When used in this article, unless the context otherwise requires, the following terms shall have the meanings respectively ascribed to them by this section:

(1) Commission or Securities Commission. The securities commission.

(2) Agent. Any individual other than a dealer who represents a dealer or issuer in effecting or attempting to effect sales of securities, but such term does not include an individual who represents an issuer in:

a. Effecting a transaction in a security exempted by subdivisions (1), (2), (3), (4), (9) or (10) of Section 8-6-10;

b. Effecting transactions exempted by Section 8-6-11; or

c. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

A partner, officer, or director of a dealer or issuer is an agent if he otherwise comes within this definition.

(3) Dealer. Any person engaged in the business of effecting transactions in securities for the account of others or for his own account. Such term does not include:

a. An agent, issuer, bank, savings institution, savings and loan association, credit union, or trust company, or

b. A person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions and other dealers.

(4) Guaranteed. Guaranteed as to payment of principal, interest, or dividends.

(5) Issuer. Every person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts for a compensation or a consideration as a promoter for or on behalf of a corporation, trust, unincorporated association, or partnership of any kind to be formed shall be deemed to be an issuer.

(6) Nonissuer. Not directly or indirectly for the benefit of the issuer.

(7) Person. Such term shall include a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust, and any unincorporated organization. As used herein the term "trust" shall not include a trust created or appointed under or by virtue of a

last will and testament, by instrument of declaration or appointment by any person for the benefit of himself, relatives, friends, servants, or employees, by a court or any public charitable trust.

(8) Sale, Sell, Offer and Offer to sell. "Sale" and "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer or dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(9) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Company Act of 1940, and Investment Advisers Act of 1940. The federal statutes of those names as amended at any time.

(10) Security. Any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, annuity contract unless issued by an insurance company, bankers' shares, trustees' shares, investment participating bonds, investment trust debentures, units, shares, bonds and certificates in, for, respecting, or based upon any form of securities or collateral, subscriptions and contracts covering or pertaining to the sale or purchase on the installment plan of any security as herein defined, or subscription or contracts covering or pertaining to the sale or purchase of beneficial interest in title to property, profits or earnings, or any right to subscribe to any of the foregoing, or any instrument of any kind commonly known as a security.

(11) State. Any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(12) Underwriter. A person who agrees to take or contracts to dispose of a stipulated amount of securities, or a portion thereof, at a fixed price.

(13) Broker. A dealer, as hereinabove defined.

(14) Suspend. When used in relation to the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative, such term shall mean the temporary cessation or inoperativeness of such registration, whether by reason of operation of law or by reason of an order of the securities commission.

(15) Revoke. To vacate the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative for cause by order of the securities commission.

(16) Cancel. To terminate the registration of either a security, a dealer, an investment adviser, an agent, or an investment adviser representative upon application filed therefor as follows:

a. In the case of a security, upon application therefor filed by the issuer thereof or the

person who secured the registration of said security;

b. In the case of a dealer, upon the application therefor filed by such dealer;

c. In the case of an investment adviser, upon the application therefor filed by such investment adviser;

d. In the case of an agent, upon the application therefor filed by either the issuer or dealer employing such agent; and

e. In the case of an investment adviser representative, upon application therefor filed by the investment adviser employing such investment adviser representative.

(17) Fraud, Deceit and Defraud. These terms are not limited to common-law deceit.

(18) Investment adviser. Any person, who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

a. An investment adviser representative;

b. A depository institution, which term includes a person organized, chartered, or holding an authorization certificate under the laws of this state or the United States which authorizes the person to receive deposits including a savings, share, certificate, or deposit account, and which is supervised and examined for the protection of depositors by an official or agency of this state or the United States; and a trust company or other institution authorized by federal or Alabama law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the Comptroller of the Currency and is supervised and examined by an official or agency of this state or the United States; but which does not include an insurance company or other organization primarily engaged in the insurance business, or a Morris Plan bank, industrial loan company, or a similar bank or company unless its deposits are insured by a federal agency;

c. A lawyer, accountant, engineer, or teacher whose performance of investment advisory services is solely incidental to the practice of that person's profession;

d. A broker-dealer or its agent whose performance of investment advisory services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for the investment advisory services;

e. A publisher, employee, or columnist of a newspaper, news magazine, or business or financial publication, or an owner, operator, producer, or employee of a cable, radio or television network, station, or production facility if the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client;

f. An insurance company, its employees, or agents who are engaged exclusively in the sale or distribution of life, health, or casualty insurance or insurance related products.

(19) Investment adviser representative. Any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual employed by

or associated with an investment adviser, except clerical or ministerial personnel, who:

- a. Makes any recommendation or otherwise renders advice regarding securities,
- b. Manages accounts or portfolios of clients,
- c. Determines which recommendation or advice regarding securities should be given,
- d. Solicits, offers, or negotiates for the sale of or sells investment advisory services, unless the solicitation, offering, or selling activities are solely incidental to his or her profession and such person is a dealer or salesman registered under Section 8-6-3 and the person would not be an investment adviser representative except for the performance of activities described in subdivision (18)d. of this section, or
- e. Supervises employees who perform any of the foregoing.

(20) Officer. A president, vice-president, treasurer, secretary, comptroller, or any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(21) Applicant. A person, natural or otherwise, executing or submitting an application for registration.

(22) Registrant. An applicant for whom a registration has been declared effective by the commission.

(23) Affiliate. A person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, an applicant or registrant.

(24) Controlling person, Control, Controlling, Controlled by, Under common control with. The possession, directly, or indirectly, or the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(25) Salesman. An agent, as hereinabove defined.

(Acts 1959, No. 542, p. 1318, § 9; Acts 1975, No. 1044, p. 2095, § 1; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT

This section sets forth the definitions of terms used in this article. The terms "agent" and "salesman" at prior subdivisions 8-6-2(2) and (14), respectively, are synonymously defined and, accordingly, are merely duplicative. The Uniform Securities Act (Uniform Act) at section 401(b) defines the term "agent" similarly and uses the term throughout to the exclusion of the synonymous term "salesman". See Loss, *Commentary on the Uniform Securities Act* 88-89 (*Loss Commentary*) and Long, *Blue Sky Law*, § 6.02. To promote uniformity among the states and to avoid duplicative terms and potential confusion and inconsistencies in interpretation, subdivision 8-6-2(2) is amended to substitute the term "agent" for the term "salesman," and, accordingly, subdivision 8-6-2(14) is deleted. The term "agent" is hereinafter substituted for the term "salesman" throughout this article.

The definition of the term "agent," formerly "salesman" and "agent," has been amended to exclude individuals who represent an issuer in effecting a transaction in a security exempted by subdivision 8-6-10(4), a security issued by a federal or state savings and loan association. The different treatment accorded a security issued by "banks, savings institutions and trust companies" exempted by subdivision 8-6-10(3) may have been an oversight in the Uniform Act. See Long, *Blue Sky Law* § 6.02(3)(c). The distinction also may have resulted because savings and loans were established as mutual associations. In recent years, however, statutory changes

have permitted them to convert from mutual associations to stock companies. This amendment is intended to recognize this development and to establish parity in treatment.

Similarly, the definition of the term, "dealer," at subdivision 8-6-2(3)a is amended to substitute the term "agent" for the term "salesman" and to add "savings and loan association" as an exclusion from the definition of the term "dealer".

Definitions of the terms "investment adviser" and "investment adviser representative" are provided at subdivisions 8-6-2(18) and (19), respectively. These persons are addressed by regulatory provisions in the Uniform Act but prior to this revision have not been regulated specifically under this article. The determination of whether a person is an investment adviser should be made after a consideration of all relevant factors, including: (i) whether the principal purpose of the person's engagement is to render investment advice, (ii) whether the person holds himself out as an investment adviser or as a person who is capable of rendering investment advice, and (iii) whether the person, after a consideration of all relevant factors, *in fact* receives a portion of his compensation for rendering investment advice. This issue, as well the exclusion for "solely incidental" services provided by the professionals specified in subdivision 8-6-2(18)c and d, should be made with reference to administrative and judicial interpretations of the Investment Advisers Act of 1940. The exclusion for certain licensed professionals, like certified public accountants whose investment advisory services are performed solely incidental to their professional services, is not intended to expand established criteria for determining whether such a professional is an investment adviser. The exclusions from the definition of the term "investment adviser" are based on similar exclusions set forth in the Uniform Act and the Uniform Securities Act (1985) (Revised Uniform Act) at sections 401(f) and 101(7), respectively, and the Investment Advisers Act of 1940 at section 202(a)(11). See generally SEC Release No. IA 1092 (Oct. 8, 1987) and NASAA Reports (CCH) ¶7403 (Sept. 3, 1987). An additional exclusion for insurance companies and their agents has been provided to make it clear that those engaged *exclusively* in the sale of insurance are not investment advisers. However, it is not intended to exclude insurance companies or agents who hold themselves out as financial planners or who otherwise engage in the business of advising others regarding investments in securities. To provide administrative flexibility, the commission is empowered to exclude persons not mentioned specifically in the categories of excluded persons set forth to the extent consistent with the intent of the definition.

Because the term "agent," as defined above, would not necessarily include sales representatives of investment advisers, a separate definition of "investment adviser representative" is provided. The definition of this term was omitted from the Uniform Act in 1956, primarily because of the absence of coverage by earlier state statutes. See *Loss Commentary* 13-15 and Long, *Blue Sky Law* § 6.04(1). As a result, the regulatory scheme established by the Uniform Act applies to sales representatives of dealers but does not apply similarly to sales representatives of investment advisers. The definition provided eliminates this regulatory imbalance and is based upon the North American Securities Administrators Association (NASAA) Investment Adviser Amendments to the 1956 Uniform Securities Act (NASAA Amendments). See *NASAA Reports* (CCH) ¶4881.

Lastly, definitions of the terms, "officer", "applicant", "registrant", "affiliate", "controlling person" and "salesman" have been added to assist courts and practitioners in the interpretation of these frequently used terms.

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RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Personal Injury and Torts § 10:22, Fraud.

Alabama Personal Injury and Torts § 12:17, Fraud.

ANNOTATIONS

CASENOTES

Constitutionality 1

Founders contract 3

Investment contracts, generally 2

Sale of securities 5

Securities 4, 5

Securities - Generally 4

Securities - Sale of securities 5

1. Constitutionality

As to constitutionality, see *Favor v. State*, 389 So.2d 556 (Ala.Crim.App.1980).

2. Investment contracts, generally

An investment contract means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise. *Gallion v. Alabama Mkt. Ctrs., Inc.*, 282 Ala. 679, 213 So.2d 841 (1968); *Burke v. State*, 385 So.2d 643 (Ala.Crim.App.1979), *aff'd*, 385 So.2d 648 (Ala.1980).

Test as to what constitutes an investment contract is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others. *Gallion v. Alabama Mkt. Ctrs., Inc.*, 282 Ala. 679, 213 So.2d 841 (1968); *Burke v. State*, 385 So.2d 643 (Ala.Crim.App.1979), *aff'd*, 385 So.2d 648 (Ala.1980).


The test for determining whether a contract, transaction, or scheme, is an investment contract is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. The critical inquiry, incorporated into this test, is whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise. *Burke v. State*, 385 So.2d 648 (Ala.1980). Securities Regulation ☒ 252

Line is drawn as to what constitutes an investment contract where neither the element of a common enterprise nor the element of reliance on the efforts of another is present. *Gallion v. Alabama Market Centers, Inc.*, 282 Ala. 679, 213 So.2d 841 (Ala.1968).

3. Founders contract

Founders contracts are not investment contracts under the Alabama Securities Act. The profits are not dependent upon the efforts of third parties, but are dependent upon the efforts of the "investor." Hence, there is no investment contract. *Gallion v. Alabama Market Centers, Inc.*, 282 Ala. 679, 213 So.2d 841 (Ala.1968).

4. Securities--Generally

Assets of automobile dealership were not a "security" as term is defined in Alabama Securities Act. *Ford Motor Co. v. Sperau*, 708 So.2d 111 (Ala.1997), rehearing denied, certiorari denied 118 S.Ct. 1519, 523 U.S. 1075, 140 L.Ed.2d 671. Securities Regulation  249.1

Legislature did not intend money market account to be a security. Research has not uncovered any case law directly on point defining a personal money market account as a "security" or a "checking account." However, in light of the detailed list defining "security" in subdivision (10) of this section, the court concluded that the legislature would have included a "money market" account within the definition of "security" had it intended such an account to be considered a "security." *Hooper v. McCray*, 593 So.2d 1018 (Ala.1992).

5. ---- Sale of securities

Cited in *Deason v. State*, 380 So.2d 373 (Ala.Crim.App.1980); *Buffo v. State*, 415 So.2d 1146 (Ala.Crim.App.1980).

Test for determining what constitutes sale of securities. See *Burke v. State*, 385 So.2d 643 (Ala.Crim.App.1979), affirmed 385 So.2d 648.

§ 8-6-3. Registration and bonds of dealers and salesmen. [Historical Notes](#) [References](#) [Annotations](#)

(a) It is unlawful for any person to transact business in this state as a dealer or agent for securities unless he is registered under this article. It is unlawful for any dealer or issuer to employ an agent unless the agent is registered.

(b) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(1) He is so registered under this article;

(2) His only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than \$1,000,000, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commission; or

(3) He has no place of business in this state and during any period of 12 consecutive months does not direct business communications in this state in any manner to more than five clients, other than those specified in subdivision (2), whether or not he or any of the persons to whom the communications are directed is then present in this state.

(c) It is unlawful for any investment adviser required to be registered to employ an investment adviser representative unless the investment adviser representative is registered under

this article. The registration of an investment adviser representative is not effective during any period when he is not employed by an investment adviser registered under this article. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the commission.

(d) A dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the securities commission, or its designee, an application, together with a consent to service of process pursuant to Section 8-6-12 and payment of the fee prescribed in subsection (h) of this section. The application shall contain whatever information the commission requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant and, in the case of a dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving moral turpitude, a security or any aspect of the securities business, any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser.

(e) The commission shall by rule or order require all or any class of applicants to post surety bonds, or cash, in an amount not less than \$50,000, and shall determine their conditions.

(f) If no order to the contrary is in effect and no proceeding is pending under subsection (j) of this section, registration becomes effective at 5:00 P.M. on the sixtieth day after an application is filed. The Securities Commission may specify an earlier effective date, and it may by order defer the effective date until 5:00 P.M. of the sixtieth day after the filing of any amendment. The commission shall require as conditions of registration that:

(1) All or any class of applicants and, in the case of a corporation or partnership, the officers or partners, pass an examination, either written or oral, the form, content, and conduct of which the commission shall prescribe by rule or order.

(2) A dealer shall have and maintain a minimum net capital as the commission shall prescribe by rule or order. The commission may by rule establish minimum financial requirements for investment advisers, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(3) Every registration expires December 31 unless renewed as hereinafter provided.

(g) Registration of a dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the securities commission, or its designee, prior to the expiration thereof, a renewal application. The renewal application shall contain such information as the commission may require to indicate any material change in the information contained in the original application or any renewal application for registration filed with the commission, or its designee, by the applicant, payment of the prescribed fee and a bond as provided in subsection (e) of this section, if the financial condition of the registrant requires such bond. In order to continue the effectiveness of registration and to entitle the dealer or adviser to a renewal thereof, such registrant must file a financial statement prepared in accordance with generally accepted

accounting principles and certified by an independent certified public accountant showing the financial condition of such registrant at the close of its fiscal period. This statement must be filed with the commission, or its designee, within 60 days after the close of the registrant's fiscal period unless an extension of time is granted by the commission. The commission shall accept for filing a financial statement in the form required to be filed with the United States securities and exchange commission from those registrants who are registered therewith.

(h) The fee for initial or renewal registration shall be \$200 for a dealer, \$50 for an agent, \$200 for an investment adviser and \$50 for an investment adviser representative. The fee for initial or renewal registration of an investment adviser or investment adviser representative shall be deposited in the Alabama Securities Commission Fund in the state treasury to be drawn upon by the commission for its use in administration of this article. When an application is denied or withdrawn, the Securities Commission shall retain the fee.

(i) Every registered dealer and investment adviser shall make and keep such accounts and other records as the securities commission by rule prescribes. All records so required shall be preserved for five years unless the commission prescribes otherwise for particular types of records. The commission may require that certain information be furnished or disseminated by a registrant as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the commission in its discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement. All the records of any registrant are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commission, within or without this state, as the commission deems necessary or appropriate in the public interest or for the protection of investors.

(j) The Securities Commission may by order deny, suspend, or revoke any registration, or censor or bar any applicant or registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the commission finds that the order is in the public interest and that the applicant or registrant or, in the case of a dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser:

(1) Has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstance under which it was made, false or misleading with respect to any material fact;

(2) Has willfully violated or willfully failed to comply with any provisions of this article, or a predecessor act, or any rule or order under this article, or a predecessor act;

(3) Has been convicted of any misdemeanor involving moral turpitude, a security, or any aspect of the securities business or any felony;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) Is the subject of an order of the commission denying, suspending, or revoking registration as a dealer, agent, investment adviser, or investment adviser representative;

(6) Is the subject of an order, adjudication, or determination entered within the past 10 years by a securities or commodities agency or a national securities exchange or association registered under the Securities Exchange Act of 1934, or an administrator of another state, or a court of competent jurisdiction that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the federal mail and wire fraud statutes, or the securities, investment adviser, or commodities law of any other state; but the commission may not enter any order under this subsection on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) Has engaged in dishonest or unethical practices in the securities business;

(8) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commission may not enter an order against a dealer or investment adviser under this subsection without a finding of insolvency as to the dealer or investment adviser;

(9) Has not complied with a condition imposed by the commission under subsection (f) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(10) Has failed reasonably to supervise his agents or employees if he is a dealer, or his investment adviser representatives or employees if he is an investment adviser to assure their compliance with this article; or

(11) Has failed to pay the proper filing fee, but the commission may enter only a denial order under this subsection, and it shall vacate any such order when the deficiency has been corrected.

The commission may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection.

(k) If the Securities Commission finds that any registrant or applicant for registration is no longer in existence, has ceased to do business as a dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commission may by order cancel the registration or application.

(Acts 1959, No. 542, p. 1318, § 2; Acts 1969, No. 605, p. 1093, § 1; Acts 1971, No. 2243, p. 3598, §§ 1, 2; Acts 1979, No. 79-462, p. 827, § 1; Acts 1988, 1st. Ex. Sess., No. 88-722, p. 112; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT

This section adds provisions for the regulation of investment advisers and investment adviser representatives, as defined above, similar to the requirements applicable to dealers and their agents. Although approximately forty states require investment advisers to be licensed, and regulatory provisions are included in the Uniform Act, no investment adviser regulatory scheme has been previously enacted in this state. The Consumer Federation of America has estimated that in 1986 alone investors were defrauded in the amount of \$540 million and lost an equal or greater amount in transactions involving incompetent advice or conflicts of interests. See *Wall Street Journal*, July 16, 1987 at col. 1, page 6. Both the Council of Better Business Bureaus and NASAA have noted substantial monetary damages suffered by investors as a result of fraudulent

and unethical business practices committed by so-called "financial planners" and other investment advisers. These practices involve, among others, misrepresentation of and failure to disclose the training, experience, performance record and other qualifications of the adviser (anyone can "hang out a shingle"), misrepresentation of or failure to disclose the terms of the relationship, the adviser's compensation for services, referral fees and other material conflicts of interest, giving advice without regard to an investment's suitability for a particular investor, placing orders without investors' consent, excessive trading in the investors' accounts, borrowing from and loaning money to investors frequently based on investors' confidential release of financial information to the adviser, guaranteeing specific investment results to investors, publishing and circulating false advertisements, disclosing confidential information about investors to third parties, and improperly using investors' funds and securities in the custody of the adviser. See NASAA Statement of Policy on Unethical Business Practices of Investment Advisers, *NASAA Reports* (CCH) ¶2201 (Apr. 5, 1985). NASAA has issued a resolution urging all states not having legislation governing the registration and regulation of investment advisers to effect passage as soon as practicable. *NASAA Reports* (CCH) ¶7401. This section does not purport to regulate financial planners generally, but only financial planners and other investment advisers whose range of services includes advice concerning securities. The provisions set forth are based upon the Uniform Act, as modified by the NASAA Amendments.

Subsection 8-6-3(d) eliminates the automatic registration as agents of partners and executive officers of applicants who act also as agents. The information regarding these agents was formerly required supplementally by registration forms no longer in use. This modification conforms the registration process with NASAA's Central Registration Depository (CRD) system, managed by the National Association of Securities Dealers, Inc. (NASD). Virtually all the states now participate in this system. The CRD system permits uniform registration forms to be filed by dealers and agents centrally with the NASD, indicating those states in which the applicant is to be registered, and permits the various state commissions to process the applications by computer access. This system has significantly reduced registration costs for both applicants and regulators. See *Blue Sky Law Reporter* (CCH) ¶5131. Statutory authority for participation in the CRD system or similarly integrated systems is here provided by the language authorizing applications to be filed "with the securities commission or its designee," and identical language at subsection 8-6-3(g).

Subsection 8-6-3(e) provides the commission with authority to determine by rule or order the conditions for surety bonds required of applicants under this article, deleting the cumbersome regimen set forth at prior subsection 8-6-3(c). This provision enables the commission to conform its bond requirements to programs developed and standards adopted from time to time by the NASD or other authorities.

Subdivision 8-6-3(f) (1) provides the commission with authority to determine by rule or order provisions concerning the examination of applicants mandated under this article, deleting the detailed and largely obsolete instructions set forth at prior subsection 8-6-3(d). NASAA has adopted the Uniform Securities Agent State Law Examination (USASLE), now used by thirty-three jurisdictions, and a uniform exam for investment adviser representatives, which seek to establish uniformity among the states in examination requirements.

Subdivision 8-6-3(f) (2) requires the commission to provide by rule or order the minimum net capital of dealers, thereby deleting the net worth requirement and net worth formula set forth at prior subdivisions 8-6-3(d) (2) and (c), respectively. This provision enables the commission to conform its financial responsibility requirements to those imposed upon dealers by the SEC or

the NASD. The commission is also empowered to establish financial responsibility requirements for investment advisers.

Subsection 8-6-3(g) incorporates investment advisers and their representatives into the registration renewal scheme.

Subsection 8-6-3(h) eliminates partial refunds of registration fees upon denial or withdrawal of applications for registration, as previously set forth at subsection 8-6-3(f).

Subsection 8-6-3(i) empowers the commission to establish information requirements for investment advisers as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

Subsection 8-6-3(j) empowers the commission, in addition to suspension or revocation of registration, to censure or bar an applicant or registrant or their directors, officers and employees from employment or limit their activities in businesses requiring registration if the commission finds its order to be in the public interest and certain specified acts or violations of law have been committed. Included are adjudications or determinations of securities law violations within the past ten years only if made after notice and opportunity for a hearing was afforded. The notice and hearing requirements pertinent to the commission's suspension, revocation, censure and disbarment proceedings are not set forth here, as previously under prior subsection 8-6-3(h), but have been rewritten to conform with the Alabama Administrative Procedure Act, and are set forth at section 8-6-32.

Subsection 8-6-3(k) incorporates investment advisers and their representatives into the provisions dealing with cancellation of registration after cessation of business or adjudication of incompetence.

REFERENCES

CROSS REFERENCES


As to licenses for stock and bond brokers, see § 40-12-162.

ADMINISTRATIVE CODE

- 21 Ala. Admin. Code 830-X-3-.02, Securities Commission; Registration of Dealers, Agents, Investment Advisers and Investment Adviser Representatives: Application for Registration as an Agent.
- 21 Ala. Admin. Code 830-X-3-.04, Securities Commission; Registration of Dealers, Agents, Investment Advisers and Investment Adviser Representatives: Application for Registration as an Investment Adviser Representative.
- 21 Ala. Admin. Code 830-X-3-.06, Securities Commission; Registration of Dealers, Agents, Investment Advisers and Investment Adviser Representatives: Net Capital Required.

LIBRARY REFERENCES

American Digest System:

Securities Regulation  247, 256.1-261, 272, 276-278.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 372-374, 377-378, 393, 404-409, 412, 416, 429.

RESEARCH REFERENCES

Forms

Alabama Corporation Law with Forms § 2:18, Corporations Formed to Conduct an "Active" Business.

Am. Jur. Pl. & Pr. Forms Securities Regulation § 2, Statutory References.
Am. Jur. Pl. & Pr. Forms Securities Regulation § 99, Statutory References.

ANNOTATIONS

CASENOTES

Enforcement of agreements 2
Particular circumstances 3
Specific intent 1

1. Specific intent

2. Enforcement of agreements

Registered securities broker-dealer was not entitled to enforce customer agreements containing arbitration provision, where broker-dealer violated provision of the Securities Act governing registration of dealers and salesmen with regard to its agent, who registered with the state Securities Commission after assuming his college roommate's identity. *Securities America, Inc. v. Rogers*, 850 So.2d 1252 (Ala.2002), rehearing denied, certiorari denied 124 S.Ct. 83, 540 U.S. 818, 157 L.Ed.2d 35. Arbitration ☒ 91; Securities Regulation ☒ 292

3. Particular circumstances

Registered securities broker-dealer and its agent, who registered with the state Securities Commission after assuming his college roommate's identity, violated provision of the Securities Act governing registration of dealers and salesmen. *Securities America, Inc. v. Rogers*, 850 So.2d 1252 (Ala.2002), rehearing denied, certiorari denied 124 S.Ct. 83, 540 U.S. 818, 157 L.Ed.2d 35. Securities Regulation ☒ 278

Cited in *Graddick v. State*, 408 So.2d 533 (Ala.Crim.App.1981); *First Baptist Church of Grayson Valley, Inc. v. Nationwide Bond, Inc.*, 460 So.2d 1258 (Ala.1984).

Specific criminal intent or guilty knowledge that law is being violated is not required to find criminal violations of those sections of the Alabama Securities Act prohibiting the sale of unregistered securities (§ 8-6-4) and requiring registration as a securities dealer (§ 8-6-3(a)); all that is required is that the state prove that the defendant acted willfully in the sense that he was aware of what he was doing. *Bayhi v. State*, 629 So.2d 782 (Ala.Crim.App.1993), certiorari denied. Securities Regulation ☒ 321

Specific criminal intent or guilty knowledge that law is being violated is not required in order to find a criminal violation of subsection (a) of this section. *Favor v. State*, 389 So.2d 556 (Ala.Crim.App.1980).

§ 8-6-4. Registration of securities -- Required; exceptions. [References](#) [Annotations](#)

It is unlawful for any person to offer or sell any security in this state unless:

- (1) It is registered under this article;
- (2) The security is exempt from registration under Section 8-6-10; or
- (3) The transaction is exempt under Section 8-6-11.

(Acts 1959, No. 542, p. 1318, § 3; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 247.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 372-373.

RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Personal Injury and Torts § 10:20, Conversion.

Alabama Personal Injury and Torts § 10:22, Fraud.

ANNOTATIONS

CASENOTES

Exemption from registration 2

Offer to sell 1

Specific intent 3

Sufficiency of evidence 4

1. Offer to sell

"Offer" or "offer to sell" includes every attempt to offer or dispose of, or solicitation of an offer to buy, a security or interest in a security for value. *Deason v. State*, 380 So.2d 373 (Ala.Crim.App.1980).

2. Exemption from registration

Interests in investments were not exempt from registration under state law because corporation received remuneration in connection with the sale of those interests. *Upton v. Trinidad Petroleum Corp.*, 1981, 652 F.2d 424.

3. Specific intent


Specific criminal intent or guilty knowledge, etc. A specific criminal intent or guilty knowledge that the law is being violated is not required to find criminal violations of those sections of the Alabama Securities Act prohibiting the sale of unregistered securities (§ 8-6-4) and requiring registration as a securities dealer (§ 8-6-3(a)); all that is required is that the state prove that the defendant acted willfully in the sense that he was aware of what he was doing. *Bayhi v. State*, 629 So.2d 782 (Ala.Crim.App.1993), certiorari denied. Securities Regulation ☒ 321

Specific criminal intent or guilty knowledge that law is being violated is not required in order to find a criminal violation of this section. *Favor v. State*, 389 So.2d 556 (Ala.Crim.App.1980).

4. Sufficiency of evidence

Cited in *Graddick v. State*, 408 So.2d 533 (Ala.Crim.App.1981); *Lloyd v. Professional Realty Servs., Inc.*, 734 F.2d 1428 (11th Cir. 1984); *Foster v. Jesup & Lamont Sec. Co.*, 759 F.2d 838 (11th Cir. 1985); *Foster v. Jesup & Lamont Sec. Co.*, 482 So.2d 1201 (Ala.1986).

Clearing broker was not liable in fraud to putative buyers of securities in transaction that was

void due to failure to register shares under state blue sky law; clearing broker had taken no part in sale, except for performing routine bookkeeping functions, and there was no evidence linking clearing broker to introducing broker, who had been active in transaction. *Denson v. Bear, Stearns Securities Corp.*, 682 So.2d 69 (Ala.1996). Securities Regulation  302

There was sufficient evidence from which the jury could have properly found that defendants, without first registering as salespersons with the Securities Commission, willfully violated this section and that they sold or offered to sell unregistered securities although they did not personally negotiate the sale of the securities with the investors. There was ample evidence from which the jury could have reasonably inferred that they participated in the sale or the offer to sell unregistered securities: They were general partners in the limited partnership out of which the business grew, they were stockholders, officers, and directors in the corporation, one of the defendants was the president and a major stockholder, and another was the executive director, they attended the meetings where the securities were offered for sale and were sold, at the meetings of investors, they were introduced as key management people, and the prospectus, which was circulated to the potential investors, showed them as key management people. *Bayhi v. State*, 629 So.2d 782 (Ala.Crim.App.1993), certiorari denied.

§ 8-6-5. Registration of securities -- Registration by notification. [Historical Notes](#) [References](#)

(a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under Section 8-6-6:

(1) Any security whose issuer and any predecessors have been in continuous operation for at least five years if:

a. There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision; and

b. The issuer and any predecessors during the past three fiscal years have had average net earnings determined in accordance with generally accepted accounting practices which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which:

1. Equal at least five percent of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed, (as measured by the maximum offering price or the market price on a day selected by the registrant within 30 days before the date of filing the registration statement, whichever is higher, or, if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within 90 days of the date of filing the registration statement); or

2. If the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three full fiscal years, equal at least five percent of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued.

(2) Any security, other than a certificate of interest or participation in an oil, gas, or

mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if any security of the same class has ever been registered under this article, or a predecessor act, or the security being registered was originally issued pursuant to an exemption under this article, or a predecessor act.

(3) Any national market system security under Section 11A of the Securities Exchange Act of 1934, including any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so designated or approved, and any warrant or right to purchase or subscribe to any of the foregoing; provided, however, that the Securities Commission may by rule limit the application of this subdivision (3) if it finds such action to be in the public interest.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in Section 8-6-8 and, if required under Section 8-6-12, a consent to service of process meeting the requirements of that section:

(1) A statement demonstrating eligibility for registration by notification;

(2) With respect to the issuer, its name, address, and form of organization, the state or foreign jurisdiction and the date of its organization, and the general character and location of its business;

(3) A description of the securities being registered;

(4) Total amount of securities to be offered and amount of securities to be offered in this state;

(5) The price at which the securities are to be offered for sale to the public, any variation therefrom at which any portion of the offering is to be made to any person other than an underwriting and selling discounts or commissions, and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees, including cash, securities, or anything else of value;

(6) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(7) Description of any options outstanding or to be created in connection with the securities being offered;

(8) Any adverse order or judgment previously entered in connection with the offering by any court or the securities and exchange commission;

(9) A copy of an offering circular or prospectus to be used in connection with the offering;

(10) In the case of any registration under subdivision (a) (2) of this section which does not also satisfy the conditions of subdivision (a) (1) of this section, a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than two years.

(c) If no order to the contrary is in effect and no proceeding is pending under Section 8-6-9, a registration statement under this section automatically becomes effective at 3:00 P.M. central standard time on the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Securities Commission determines.

(Acts 1959, No. 542, p. 1318, § 4; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT


Section 8-6-5 provides for registration by notification, the simplest method of registration for a distribution of securities under this article. It requires the filing of certain basic financial information with the commission, and absent an order to the contrary, the registration automatically becomes effective on the fifth business day after filing or at an earlier date as determined by the commission. This registration procedure, because of the limited information requirements and brief waiting period for effectiveness, is available generally only with respect to the securities of seasoned issuers. Subdivision 8-6-5(a)(3) adds an additional category of securities to those already established as eligible for registration pursuant to the streamlined notification procedure. This additional category includes exchange-listed securities and over-the-counter securities which are designated as national market system (NMS) securities under section 11A of the Securities Exchange Act of 1934. National market system securities now comprise all over-the-counter or exchange-listed securities for which trading transaction reports are required to be made on a real-time basis pursuant to a transaction reporting plan approved by the Securities and Exchange Commission (SEC). See SEC Rule 11Aa2-1, 17 C.F.R. § 240.11Aa2-1 and SEC Rule 11Aa3-1, 17 C.F.R. § 240.11Aa3-1. This revision recognizes that the informational and liquidity benefits accruing to investors in these securities should entitle these securities to be registered under the notification procedures, which have heretofore been available only to those issuers which have been in continuous operation for five years, without material default on their financial obligations and with a substantial earnings history. Although issuers of NMS securities may not use the streamlined notification procedure for initial public offerings, the added provision does allow these issuers to use the procedure for subsequent public offerings without regard to qualitative criteria and without regard to whether the securities are concurrently registered with the SEC.

Although certain exchange-listed securities were formerly exempted from registration under prior subdivision 8-6-10(7), this exemption did not apply to initial public offerings or to over-the-counter securities. At the time this exemption was enacted, the over-the-counter market was loosely organized and subject to less rigorous self-regulatory oversight than the organized exchanges, and, accordingly, securities traded in that market were not exempted. In contrast, the major exchanges imposed quantitative and qualitative standards for initial and continued listing of securities, thereby providing a substantial measure of protection in addition to a liquid market in which a dissatisfied investor could readily sell his securities. In recent years, however, increased competition among the exchanges and the over-the-counter market has resulted in a controversy regarding the continued maintenance of established qualitative listing standards, including, among others, the shareholder's right to one vote per share. See generally, Warren, "One Share, One Vote: A Perception of Legitimacy," 14 *Journal of Corporation Law* 89 (1988). The SEC, NASAA, various members of Congress and legal scholars have expressed concern that this competition for listings, with attendant listing fees and trading commissions, will result in a "race to the bottom" in which self-regulatory standards are diluted or eliminated in order to retain or attract listings in a particular market. See, e.g., NASAA Resolution Pertaining to NYSE One Share, One Vote Policy, *NASAA Reports* (CCH) ¶11, 101 (Nov. 20, 1986). The Alabama Securities Act now establishes full parity of treatment for exchange-listed and over-the-counter securities which are designated NMS securities. Both categories are subject to registration by notification and, in order to secure an exemption from any registration under the Act, both must comply with the qualitative criteria now established under subdivision 8-6-10(7).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  248-254, 262.1-269, 272, 276.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 3, 374, 377, 379-403.

§ 8-6-6. Registration of securities -- Registration of certain securities by coordination.

References

(a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in Section 8-6-8:

(1) Two copies of the prospectus filed under the Securities Act of 1933, together with all amendments thereto;

(2) If the Securities Commission requests, any other information or copies of any other documents filed under the Securities Act of 1933;

(3) The amount of securities to be offered in this state;

(4) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(5) Any adverse order or judgment previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(6) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No order to the contrary is in effect;

(2) The registration statement has been on file with the securities commission for at least five full business days; and

(3) A statement; of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for one full business day, or such shorter period as the commission permits by rule or otherwise, and the offering is made within those limitations. The registrant shall promptly notify the commission by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.


(d) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the commission may enter an order denying effectiveness to the

registration statement or suspending its effectiveness until compliance with subsection (c) of this section, if the commission promptly notifies the registrant by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, of the issuance of the order. If the registrant proves compliance with the requirements of subsection (c) of this section as to notice and posteffective amendment, the order is void as of the time of its entry. The commission may by rule or otherwise waive either or both of the conditions specified in subdivisions (c) (2) and (c) (3) of this section. If the federal registration statement becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commission of the date when the federal registration statement is expected to become effective, the commission shall promptly advise the registrant by telephone or telegram at the registrant's expense whether all the conditions are satisfied and whether it then contemplates the institution of a proceeding under Section 8-6-9, but this advice by the commission does not preclude the institution of such a proceeding at any time. (Acts 1959, No. 542, p. 1318, § 5; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  248-254, 262.1-269, 272, 276.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 3, 374, 377, 379-403.

§ 8-6-7. Registration of securities -- Registration by qualification. [References](#)

(a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to payment of the registration fee prescribed in Section 8-6-8 and, if required under Section 8-6-12, a consent to service of process meeting the requirements of that section:

(1) With respect to the issuer and any significant subsidiary, its name, address and form of organizations, the state or foreign jurisdiction and date of its organization, the general character and location of its business and a description of its physical properties and equipment;

(2) With respect to every director and officer of the issuer or person occupying a similar status or performing similar functions, his name, address, and principal occupation for the past five years, the amount of securities of the issuer held by him as of the date of the offering and a record of any securities of the issuer held by him previous to the filing of the application and the offering date and the remuneration paid to all such persons in the aggregate during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer and its predecessors, parents, and subsidiaries;

(3) With respect to any person not named in subdivision (b) (2), owning of record, or beneficially if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) (2) of this section other than his occupation;

(4) With respect to every promoter not named in subdivision (b) (2) of this section, if the issuer was organized within the past three years, the information specified in subdivision (b) (2), any amount paid to him and the consideration for any such payment;

(5) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(6) The kind and amount of securities to be offered, the amount to be offered in this state, the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions, the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering, the estimated amounts of other selling expenses and legal, engineering and accounting expenses to be incurred by the issuer in connection with the offering, the name and address of every underwriter and every recipient of a finder's fee, a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(7) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order or priority in which the proceeds will be used for the purpose stated, the amounts of any funds to be raised from other sources to achieve the purposes stated and the sources of any such funds and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(8) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (b) (2), (b) (3), (b) (4), (b) (5) or (b) (7) of this section and by any persons who hold or will hold 10 percent or more in the aggregate of any such options;

(9) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(10) Any adverse order or judgment previously entered in connection with the offering by any court or the securities and exchange commission and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated;

(11) Six copies of any prospectus or circular intended as of the effective date to be used in connection with the offering;

(12) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(13) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, which shall state whether the security when sold will be legally

issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer;

(14) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(c) A registration statement under this section becomes effective when the securities commission so orders. The commission may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) of this section to be sent or given to each person to whom an offer is made before or concurrently with:

(1) The first written offer made to him, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution,

(2) The confirmation of any sale made by or for the account of any such person,

(3) Payment pursuant to any such sale, or


(4) Delivery of the security pursuant to any such sale, whichever first occurs; but the commission shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

(Acts 1959, No. 542, p. 1318, § 6; Acts 1979, No. 79-462, p. 827, § 2; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  248-254, 262.1-269, 272, 276.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 3, 374, 377, 379-403.

§ 8-6-8. Registration of securities -- Registration statement; conditions precedent to registration by qualification or coordination; bond for securities registered by qualification; action by commission on application for registration by qualification; filing and registration fees; quarterly reports and financial statements by registrants; discharge from supervision by commission. [Historical Notes](#) [References](#)

(a) A registration statement on securities may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered dealer. Any document filed under this article within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commission may permit, by rule or otherwise, the omission of any item of information or

document from any registration statement.

(b) The Securities Commission may require as a condition of registration by qualification or coordination that: (1) proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, or (2) any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash be delivered in escrow to him or to some other depository satisfactory to him under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the commission to have been actually earned on the investment in any common stock so held. The commission shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during the time such securities are held in escrow, the owner of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(c) The Securities Commission shall take official action on the application for registration by qualification within 60 days after the application has been filed and give written notice thereof, to the applicant or applicants. If the application is denied, the notice shall state the grounds for denial or, if action is delayed, the notice shall state the reasons for the delay.

(d) For the registration of securities there shall be paid to the securities commission a filing fee of \$40, plus a registration fee of one tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the registration fee shall in no case be more than \$1,000. When a registration statement is withdrawn before the effective date or a pre-effective order is entered under Section 8-6-9, the commission shall retain the filing and registration fees. An open-end management company, a face amount certificate company, or a unit investment trust, as defined in the Investment Company Act of 1940, may register an indefinite amount of securities under a registration statement. Such registrant, at the time of filing, shall pay the filing fee of \$40 and a registration fee of \$1,000 and within 60 days after the end of each year during which its registration statement is effective, file a report on a form the commission, by rule, adopts, specifying its sale of securities to persons in this state during such year. Such registrant shall pay the same registration fee each year during which the registration statement remains in effect.

(e) When securities are registered, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered dealer. Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time an order is in effect under Section 8-6-9. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction: (1) so long as the registration statement is effective, and (2) between the thirtieth day after the entry of any order suspending or revoking the effectiveness of the registration statement under Section 8-6-9, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one year from the effective date of the registration statement. A registration statement which has become effective may not be withdrawn for a period of one year from its effective date if any securities of the same class are

outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commission.

(f) The Securities Commission may require the person who filed the registration statement to file reports, but not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to securities registered by coordination and notification; provided, however, that where a registration statement has been filed by a person other than the issuer or an affiliate of the issuer, the commission may require such person to file such reports on an annual basis only.

(g) Every issuer whose securities have been registered by qualification and the registration of whose securities has not been cancelled and who has not been discharged from filing further quarterly reports under the provisions of subsection (i) of this section shall file within 30 days after the close of business on December 31, March 31, June 30, and September 30 of each year and at such other reasonable times as may be required by the Securities Commission, a statement, verified under oath by some person having actual knowledge of the facts therein stated, setting forth, in such form as may be prescribed by the commission, the financial condition, the amount of assets and liabilities of such issuer on the above date and such other information as the commission may require. If any issuer subject to the provisions of this subsection shall willfully fail or refuse to comply with any of the provisions of this subsection and shall continue to so fail or refuse for 30 days after notice or demand, the registration statement of said issuer's securities shall thereupon be revoked, and it shall thereafter be unlawful for any such issuer, his agent or agents, any dealer or salesman to sell such securities in this state.

(h) Any issuer, whose securities have been registered by qualification as provided in Section 8-6-7, who has completed the sale of the securities so registered, or who desires to discontinue the sale of said registered securities, and who desires to be discharged from further supervision of the securities commission or from further compliance with the Alabama securities law may file with the commission a notice in writing to such effect, and the commission may thereupon enter an order cancelling the registration of such securities; and such issuer shall thereupon be discharged from filing any financial report except as the commission may require up to and including the date of the filing of said notice as hereinabove provided. No such notice may be filed within one year after the effective date of the registration statement if any securities of the same class as those registered are outstanding.

(Acts 1959, No. 542, p. 1318, § 7; Acts 1969, No. 605, p. 1093, § 2; Acts 1979, No. 79-462, p. 827, § 3; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT

Subsection 8-6-8(a) eliminates the requirement that the applicant for registration of a distribution of securities be a dealer. The deleted provision, which did not conform with the Uniform Act, burdened certain types of distributions with an irrelevant requirement and unnecessarily imposed the prospect of civil liability on dealers.

Prior subsection 8-6-8(c) is deleted because of the impracticability of the bond requirement for issuers seeking to register a distribution of securities.

Subsection 8-6-8(d) modifies the registration fee requirements applicable to investment company distributions. These registrants now may specify that an indefinite amount of securities is being registered, remit a flat filing and registration fee at the time of filing, and thereafter report the amount of securities sold and remit the same registration fee for any additional year or

part thereof during which the registration statement remains in effect.

Subsection 8-6-8(g) eliminates the \$10 filing fee applicable to registrants in connection with the filing of quarterly reports.

REFERENCES

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-4-.20, Securities Commission; Registration of Securities: Separate Registration of Portfolios and Series Issued by Open-End Management Investment Companies.

LIBRARY REFERENCES

American Digest System:

Securities Regulation  247, 270, 272, 273, 276.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 372-375, 377, 410-411, 414.

§ 8-6-9. Registration of securities -- Denial, suspension and revocation of registration.

Historical Notes References

The Securities Commission shall issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement in the sale of securities if it finds that the order is in the public interest and that:

(1) The registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

(2) Any provision of this article or any rule, order, or condition lawfully imposed under this article has been willfully violated in connection with the offering by:

a. Any person filing the registration statement;

b. The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

c. Any underwriter.

(3) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the issuer, or any underwriter has:

a. Willfully violated or willfully failed to comply with any provision of this article or any rule or order under this article, or any predecessor act; or

b. Has been convicted of a felony or any misdemeanor involving moral turpitude, a security, or any aspect of the securities business.

(4) The security registered or sought to be registered is the subject of a permanent injunction or temporary restraining order of any court of competent jurisdiction entered under

any other federal or state act applicable to the offering, but:

a. The commission may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on; and

b. It may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section.

(5) The issuer's enterprise or method of business includes or would include activities which are illegal where performed.

(6) The offering has worked or tended to work a fraud upon purchasers or would so operate.

(7) The offering is being made on terms that are unfair, unjust, or inequitable.

(8) When a security is sought to be registered by notification, it is not eligible for such registration.

(9) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (b) (6) of Section 8-6-6.

(10) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, promoters' profits or participation, or unreasonable amounts or kinds of options.

(11) The applicant or registrant has failed to pay the proper registration fee, but the commission may enter only a denial order under this subdivision, and it shall vacate any such order when the deficiency has been corrected.

(Acts 1959, No. 542, p. 1318, § 8; Acts 1969, No. 605, p. 1093, § 3; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT

Subdivision 8-6-9(7) provides the commission with authority to deny, suspend or revoke the effectiveness of a registration statement if the commission finds it to be in the public interest and that the offering is being made on terms that are unfair, unjust or inequitable. This provision confirms the authority of the commission "to deny registration to a securities offering unless the substantive terms of the offering and the associated transactions ensure a fair relation between promoters and public investors and provide public investors with a reasonable relation of risk to return. See "ABA Report on State Merit Regulation," 41 *Business Lawyer* 785 (1986); see also Makens, "Who Speaks for the Investor?," 13 *U. Balt. L. Rev.* 435 (1984). This regulatory responsibility, reserved to the states under the federal securities law, has been hailed by a former NASAA president as "the finest achievement of public interest regulation." See *Securities Regulation and Law Report* (BNA) Vol. 17 at 1801 (October 11, 1985).

Prior subsection 8-6-9(c), which set forth notice and hearing procedures applicable to commission stop orders, has been deleted. This provision has been rewritten to conform with the Alabama Administrative Procedure Act and is set forth at section 8-6-32.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 270, 272, 277.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 374, 410-412, 414, 416.

§ 8-6-10. Registration of securities -- Exempt securities. [Historical Notes](#) [References](#)

Sections 8-6-4 through 8-6-9 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, any agency, corporate, or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency, corporate, or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of this state.

(4) Any security issued by and representing an interest in, a debt of, or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of this state.

(5) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is any of the following:

- a. Subject to the jurisdiction of the Interstate Commerce Commission.
- b. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of a company within the meaning of that act.
- c. Regulated in respect to its rates and charges by a governmental authority of the United States or any state.
- d. Regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

(7) Any national market system security under Section 11A of the Securities Exchange Act of 1934 (including any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; and any warrant or right to purchase or subscribe to any of the foregoing) which is so designated or approved for designation upon notice of issuance on an interdealer quotation system operated by a national securities association registered under Section 15A of the Securities Exchange Act of 1934, or any security (including any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; and any warrant or right to purchase or subscribe to any of the foregoing) which is listed or approved for listing upon notice of issuance on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, if the listing or designation criteria applicable to the issuer

of that security provide minimum corporate governance standards substantially equivalent to those applicable to securities on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers National Market System as of January 1, 1991. The commission may by order deny, revoke, or suspend the exemption of a specific issue of securities or by rule any category of securities when necessitated by the public interest and for the protection of investors.

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes or as a chamber of commerce, trade, or professional association, provided the issuer first files with the commission a written notice specifying the terms of the offer and the commission does not by order disallow the exemption within 15 days thereof.

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited or any guarantee of the paper or of any renewal.

(10) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan.

(11) A security issued by an issuer registered as an open-end management investment company or unit investment trust under Section 8 of the Investment Company Act of 1940 if:

a.

1. The issuer is advised by an investment adviser that is a depository institution exempt from registration under the Investment Advisers Act of 1940 or that is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph; and the adviser has acted, or is affiliated with an investment adviser that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph; or

2. The issuer has a sponsor that has at all times throughout the three years before an offer or sale of a security claimed to be exempt under this paragraph sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded \$100,000,000.

b. The Securities Commission has received prior to the offer or sale of the securities exempted here:

1. A notice of intention to sell which has been executed by the issuer and which sets forth the name and address of the issuer and the description of the securities to be offered in this state; and

2. A nonrefundable filing fee of \$300 for an open-end management investment company with total net assets of \$25,000,000 or less, or a nonrefundable filing fee of \$600 for an open-end management investment company with total net assets of more than \$25,000,000 but less than \$100,000,000, or a nonrefundable filing fee of \$1,000 for an open-end management investment company with total net assets equal to or greater than \$100,000,000; or a nonrefundable filing fee of \$200 for a unit

investment trust. Fees collected under this section shall be deposited in the Alabama Securities Commission Fund in the state treasury for the use of the Alabama Securities Commission in the administration of this article.

c. In the event any offer or sale of a security of an open-end management investment company is to be made more than 12 months after the date notice under paragraph (b) is received by the director, another notice and payment of the applicable fee shall be required.

d. For the purpose of this subdivision an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser.

(Acts 1959, No. 542, p. 1318, § 10; Acts 1969, No. 605, p. 1093, § 5; Acts 1990, No. 90-527, p. 772, § 1; Acts 1991, No. 91-320, p. 584, § 1; Acts 1992, No. 92-524, p. 1059, § 1.)

HISTORICAL NOTES

COMMENT

Subdivision 8-6-10(7) is amended to delete the present exemption for certain exchange-listed securities and to substitute an exemption for all national market system securities under section 11A of the Securities Exchange Act of 1934 and defined by SEC Rule 11Aa2-1, 17 C.F.R. § 240.11Aa2-1, the issuers of which are subject to minimum corporate governance criteria substantially equivalent to those presently applied by the New York Stock Exchange, the American Stock Exchange and the NASD/NMS. This amendment thereby accords parity of treatment to both exchange-listed and over-the-counter national market system securities. Parity is afforded under this provision and under section 8-6-5 governing registration by notification. The interrelationship of the notification procedure and the exemption set forth here reflects a reasonable balance in providing meaningful protection to investors while minimizing restraints on capital formation. Reference should be made to the explanatory comments set forth with respect to section 8-6-5. The exemption from registration provided here is intended to provide more reliable indicators of information availability and shareholder protection than did the mere "status" of listing on a stock exchange and compliance with non-uniform listing criteria always subject to dilution based on competitive, not regulatory, concerns. The criteria set forth in this subsection are those currently applied by either the New York Stock Exchange, the American Stock Exchange, or the NASD to its NASDAQ/NMS securities and are intended to safeguard investors against further dilution of the standards which provide the justification for the exemption from registration of these securities. See generally, Warren, "The Status of the Marketplace Exemption from State Securities Registration", 41 *Business Lawyer* 1511 (1986).

This subsection seeks to preserve for the investors in these securities minimum corporate governance standards presently applied, including those which require: (a) the distribution to shareholders of an annual report containing audited financial statements, (b) the availability of quarterly reports, (c) two independent directors, (d) an audit committee with a majority of independent directors, (e) annual shareholder meetings with a quorum of not less than one-third of the outstanding shares of the issuer's common voting stock, (f) solicitation of proxies, (g) review of all related party transactions on an on-going basis, (h) a shareholder approval policy requiring shareholder approval of significant corporate transactions, and (i) compliance with a shareholder voting rights rule prohibiting actions which would have the effect of nullifying, restricting or disparately reducing the per share voting rights of an issuer's common voting stock. See SEC Rule 19c-4, 17 C.F.R. § 240.19c-4. These corporate governance standards are also set

forth in a Memorandum of Understanding between NASAA and NASD regarding a model uniform marketplace exemption from state securities registration requirements. *NASAA Reports* (CCH) ¶11,120. See also SEC Release Nos. 33-6810 (Dec. 16, 1988) and 34-26433 (Jan. 9, 1989). It is anticipated that the commission will publish information from time to time regarding which marketplaces maintain and apply these "substantially equivalent" corporate governance criteria to issuers of national market system securities.

Subdivision 8-6-10(11) is added to provide an exemption for securities issued by certain seasoned open-end management investment companies or unit investment trusts registered and subject to federal regulation under the Investment Company Act of 1940. It is based on a similar exemption set forth in the Revised Uniform Act at section 401(b) (14).

HISTORY

The 1992 amendment, effective May 18, 1992, deleted "or" preceding "any agency" and preceding "corporate" in subdivision (1); in subdivision (2), deleted "such" preceding "province," and deleted "or" preceding "corporate"; in subdivision (6), added "any of the following" in the introductory language, and deleted "such" preceding "a company" in paragraph b, and deleted "or" at the end of paragraph c; in the first sentence of subdivision (7), inserted the language beginning "any security (including any other security" and ending "any of the foregoing)," and deleted "provided, however, that" following "January 1, 1991" at the end of the sentence; added the language beginning "provided the issuer first files with the commission" in subdivision (8); in subdivision (9), substituted "the paper" for "such paper" in two places and deleted "such" preceding "renewal"; and deleted "or" at the end of subdivision (10).


REFERENCES

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-6-.10, Securities Commission; Exempt Securities and Exempt Transactions: Eleemosynary Financing.

LIBRARY REFERENCES

American Digest System:

Securities Regulation  248-254, 262.1-269.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 3, 379-403.

RESEARCH REFERENCES

Treatises and Practice Aids

Blue Sky Law § 6:16, Types of Institutions Covered.

§ 8-6-11. Registration of securities -- Exempt transactions. [Historical Notes](#) [References](#) [Annotations](#)

(a) Except as hereinafter in this section expressly provided, Sections 8-6-3 through 8-6-9 shall not apply to any of the following transactions:

(1) Any isolated nonissuer transaction, whether effected through a dealer or not;

(2) Any nonissuer transaction in an outstanding security by a registered dealer if:

a. The issuer has a class of securities subject to registration under Section 12 of the Securities Exchange Act of 1934 and has been subject to the reporting requirements of

Sections 13 or 15(d) of the Securities Exchange Act of 1934 for not less than 180 days before the transaction; or has filed and maintained with the commission for not less than 180 days before the transaction information, in such form as the commission, by rule, specifies, substantially comparable to the information which the issuer would be required to file under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934, or the securities have been the subject of an effective registration statement within 180 days before the transaction, or the issuer is required to file and has filed all reports under Section 13 of the Securities Exchange Act of 1934, or the issuer is exempted from registration by Section 12(g)(3) of the Securities Exchange Act of 1934, it or its predecessor in interest has been in existence for at least five years, the security is listed for trading on a foreign securities exchange and has been trading for at least six months and continues to trade on such exchange, and the aggregate market value of shares, the ownership of which is unrestricted, is not less than \$500,000,000; or

b. The issuer is an investment company registered under the Investment Company Act of 1940 and has been subject to the reporting requirements of Section 30 of that act for not less than 180 days before the transaction; or

c. The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year, within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any sale or the offering for sale of any security at any judicial, executor's, administrator's, guardian, or conservator's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy;

(7) Any transaction executed by a bona fide pledge without any purpose of evading this article;

(8) Any offer or sale to a bank, savings institution, credit union, trust company, insurance company or investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction which is part of an issue of which there are no more than 10 purchasers [other than those designated in subdivision (a)(8) of this section] wherever located, of securities from the issuer during any period of 12 consecutive months if:

a. The issuer reasonably believes that all the buyers are purchasing for investment and not with a view to distribution, and such issuer exercises reasonable care to assure this investment intent, which reasonable care shall be presumed if the following conditions are satisfied:

1. Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

2. Written disclosure to each purchaser prior to sale that the securities have not been registered under the act and, therefore, cannot be resold unless they are registered under the act or unless an exemption from registration is available;

3. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the act and setting forth or referring to the restrictions on transferability and sale of the securities; and

b. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; and

c. No public advertising or general solicitation is used in connection with the issue of which the transaction in reliance on this exemption is a part.

Sections 8-6-3 through 8-6-9 shall not apply to any offer made pursuant to this subdivision (a)(9) in which no sale results.

But the Securities Commission may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption or decrease or increase the number of purchasers permitted, or waive the conditions in paragraphs a. and b. of this subdivision (9) with or without the substitution of a limitation on remuneration.

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants or transferable warrants exercisable within not more than 90 days of their issuance, if:

a. No commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state; or

b. The issuer first files a notice specifying the terms of the offer and the securities commission does not by order disallow the exemption within the next five full business days;

(11) Any offer, but not a sale, of a security for which registration statements have been filed under both this article and the Securities Act of 1933 if no order of denial, suspension, or revocation is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(12) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(13) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets; or

(14) Any transaction by an issuer if:

a. The aggregate amount of the total offering, within or without this state, shall not exceed \$500,000, less the aggregate offering price of all securities sold within 12 months before the start of and during the offering of securities under this subsection or in reliance on the exemption contained in paragraph a. of subdivision (a)(9) of this section or which have been sold in violation of Section 8-6-4.

b. No person purchases more than \$15,000 of the securities offered and sold in reliance upon the exemption contained in this paragraph, except that this limitation on the amount that may be purchased shall not apply to "accredited investors" as defined in 17 Code of Federal Regulations § 230.501.

c. A disclosure document is delivered to any purchaser of the securities sold pursuant to this exemption prior to or simultaneously with the execution by the purchaser of a written agreement to purchase, the delivery of a confirmation of sale, or the payment for securities offered by means of such disclosure document, whichever occurs first. The disclosure document under which securities are sold pursuant to this exemption shall contain the following:

1. With respect to the issuer: its name, street address, form of organization, and its telephone number; the state or foreign jurisdiction and the date of its organization; a brief description of the type and location of its business;

2. A brief description of the material risks associated with the purchase of the securities;

3. The use of proceeds from the offering, including a description of expenses, commissions and fees paid in connection with the offering and the net proceeds available for use by the issuer;

4. A description of the capital stock of the issuer if a corporation or the equity ownership if an organization other than a corporation, including, where appropriate, the number of shares of capital stock issued and outstanding, the number of shares owned by management, and the options outstanding, if any, and the average exercise price for such options;

5. The dilution, if any, to purchasers of the securities offered for sale pursuant to this exemption;

6. A description of the management of the issuer and material transactions between the issuer and management;

7. A statement that additional information concerning the issuer may be obtained upon request, including, where applicable, articles of incorporation or partnership agreement;

8. The following financial statements which may, but need not, be certified: (i) a balance sheet of the issuer or a consolidated balance sheet of the issuer and its subsidiaries prepared in accordance with generally accepted accounting principles, as of a date within ninety days prior to the first offer of sale; and (ii) a profit and loss statement of the issuer or consolidated statement of the issuer and its subsidiaries prepared in accordance with generally accepted accounting principles for each of the two fiscal years preceding the date of the balance sheet referred to above and for the interim period, if any, between the close of the most recent of such fiscal years and the date of the balance sheet and for the corresponding period of the preceding year or if the issuer and its predecessor have been in existence for less than two fiscal years, the profit and loss statement for the period for which it has been in existence;

9. The disclosure document shall contain substantially the following information shown boldly on the outside cover:

The securities are offered pursuant to a claim of exemption under the Alabama Securities Act. A registration statement relating to these securities has not been filed with the Alabama securities commission. The commission does not recommend or endorse the purchase of any securities, nor does it pass upon the accuracy or completeness of this private placement memorandum. Any representation to the contrary is a criminal offense.

10. The commission may, by rule or order, require as a condition of exemption

- under this subdivision (a)(14) that the disclosure document contain any designated part of the information as would be required by Part 1 of Form S-18, Code of Federal Regulations 239.28 not otherwise disclosed by this subdivision (a)(14), or permit the omission of any item of information from the disclosure document.
- d. The seller reasonably believes that all buyers are purchasing for investment.
 - e. No commission, finders fee or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state, unless such person is registered in this state pursuant to Section 8-6-3.
 - f. If the issuer is a corporation, its principal office and a majority of its full-time employees are located in this state.
 - g. If the issuer is a limited partnership, at least 80 percent of its assets are located in this state.
 - h. At least 80 percent of the proceeds of the offering under this subdivision (a)(14) are used in the issuers operations in this state.
 - i. At least 80 percent of the net proceeds of the offering under this subdivision (a)(14) are committed for use in a specific business.
 - j. Securities offered or sold under this subdivision (a)(14) are not offered or sold on credit or credit terms.
 - k. Offers and sales which are exempt under this subdivision (a)(14) are not combined with offers and sales by issuers in transactions which are exempt under any other rule or section of this article.
 - l. No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Rule 252(c), (d), (e) or (f) of Regulation A, 17 Code of Federal Regulations § 230.252(c), (d), (e), and (f), adopted under the Securities Act of 1933 (generally described as: the issuer, any of its predecessors or any affiliated issuer; any of the directors, officers, general partners, or beneficial owners of 10 percent or more of any equity securities of the issuer; any underwriter of the securities or any partner, director, or officer of any such underwriter; or any issuer subject to the reporting requirements of the Securities Exchange Act of 1934 who has failed to file required reports):
 - 1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption.
 - 2. Has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.
 - 3. Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.
 - 4. Is subject to any state's administrative enforcement order or judgment which

prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

5. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.

6. The prohibitions of subparagraphs 1, 2, 3, and 5 above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order of judgment was entered against such person or if the broker/dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered.

7. Any disqualification caused by this section may be waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

8. The disqualification found in 17 Code of Federal Regulations § 230 of Regulation D, shall apply also to offerings made pursuant to Rule 506 of the Code of Federal Regulations.

m. The issuer shall file with the securities commission:

1. An application for exemption on Form D, 17 Code of Federal Regulations § 239.500 no later than five full business days prior to the commencement of the offering in this state. The application for exemption shall include two copies of all information furnished by the issuer to any of the offerees. The commission shall issue an order of exemption, notice of deficiency, or denial of exemption within the five full day business period;

2. A notice of Part C of Form D, 17 Code of Federal Regulations § 239.500, no later than 30 days after the completion date of the offering;

3. The notice of Form D, 17 Code of Federal Regulations § 239.500, required by subparagraphs 1. and 2. above shall be manually signed by a person duly authorized by the issuer;

4. Every application for exemption provided for in subparagraph i. above shall be accompanied by a nonrefundable filing fee of \$150. Such filing fee shall be deposited in the Alabama Securities Commission Fund in the state treasury to be drawn upon by the commission for its use in administration of this article. All applications for exemption and notices on Form D, 17 Code of Federal Regulations § 239.500 shall be considered filed with the securities commission as of the date on which received at the office of the Securities Commission;

5. Unless otherwise available, included with or in the initial notice shall be a consent to service of process as provided for in Section 8-6-12.

But the Securities Commission may by rule or order, as to any security or

transaction of any type of security or transaction, withdraw or further condition this exemption.

(b) The Securities Commission may by order deny or revoke the exemption specified in this section with respect to a specific security if it finds the sale of such security would work or tend to work a fraud upon the purchasers thereof. No order under this subsection may operate retroactively. No person may be considered to have violated this article by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under this article, the burden of proving an exemption from a definition is upon the person claiming it.

(c) Any individual, corporation, partnership, or association who makes application to the Securities Commission for any exemption from full registration under subdivision (a)(9) of this section shall be assessed a filing fee in the amount of \$250 upon application for such exemption. Said fee shall accompany the application and shall not be refunded whether the application is approved or rejected. Fees collected under this subsection shall be deposited in a special account in the state treasury for the use of the commission in the administration of this article.

(Acts 1959, No. 542, p. 1318, § 11; Acts 1971, No. 2244, p. 3600; Acts 1975, No. 1044, p. 2095, § 2; Acts 1979, No. 79-462, p. 827, § 4; Acts 1990, No. 90-527, p. 772, § 1; Acts 1991, No. 91-320, p. 584, § 1.)

HISTORICAL NOTES

COMMENT

Subdivision 8-6-11(a)(2) provides a transactional exemption for any non-issuer transaction in securities of an issuer which is subject to and in compliance with the periodic reporting requirements of the Securities Exchange Act of 1933 or the Investment Company Act of 1940 or has filed recently a registration statement under the Securities Act of 1933. Because this form of public dissemination of information is more thorough and subject to review by the SEC, the "manual exemption" formerly provided is eliminated, together with the exemption for securities outstanding for at least three years. In addition, an exemption is provided for non-issuer transactions in the securities of foreign issuers who meet certain qualitative and quantitative criteria derived in part from the Regulation T marginability rules adopted by the Board of Governors of the Federal Reserve System.

Subdivision 8-6-11(a)(9) is amended to substitute a "ten or fewer *purchaser*" transactional exemption for the former "ten or fewer *offeree*" exemption. This exemption is intended to provide a measure of certainty in determining whether the exemption is available, since the term "offeree" has produced considerable confusion due to its broad construction by the courts. Caution is advised, however, because the federal statutory exemption for non-public offerings, set forth at section 4(2) of the Securities Act of 1933, embraces the "offeree" concept, as interpreted by the United States Supreme Court in *SEC v. Ralston Purina*, 346 U.S. 119 (1953). A safeharbor has been provided by the SEC's Regulation D, 17 C.F.R. §§ 230.501-506, which also utilizes the "purchaser" concept in establishing a limited offering exemption from federal registration. Under subdivision 8-6-11(a)(9) conditions are imposed to ensure that the exemption is not utilized to effect an offering to the general public, thereby evading the registration requirements under this article. Accordingly, the conditions include requirements that purchasers buy for their own investment and not with a view to distribution to others.

Prior subdivision 8-6-11(a)(10), which provides a transactional exemption for ten or fewer

preorganization subscriptions, is deleted. Because these subscriptions constitute securities, this exemption was necessary pending the issuance of the subscribed securities, at which time an issuer must register or rely on another exemption. However, the exemption for ten or fewer purchasers now provided at subdivision 8-6-11(a)(9) makes it unnecessary to bifurcate these transactions.

A new subdivision 8-6-11(a)(14) adds a transactional exemption intended to serve as a state corollary to the federal exemption provided by Rule 504 of Regulation D, 17 C.F.R., § 230.504. Neither compliance with this subsection nor any other exemption afforded by this act obviates the need to make a separate determination regarding the availability of an exemption from registration at the federal level under the Securities Act of 1933. In addition, regardless of whether state and federal exemptions from registration are available, issuers and their representatives are cautioned that exemptions from registration do not affect state and federal criminal and civil liabilities for misrepresentations, omissions and other prohibited conduct. Issuers and their representatives must fulfill their obligation to provide such other material information, in addition to the disclosure requirements set forth in this subsection, as may be necessary to make the information required, in light of the circumstances under which it is furnished, not misleading.

Subsection 8-6-11(b) is amended to delete the notice and hearing procedures applicable to the commission's denial or revocation of an exemption. The deleted provision has been rewritten to conform with the Alabama Administrative Procedure Act and is set forth at section 8-6-32.


REFERENCES

ADMINISTRATIVE CODE

- 21 Ala. Admin. Code 830-X-6-.11, Securities Commission; Exempt Securities and Exempt Transactions: Limited Offering Exemption.
- 21 Ala. Admin. Code 830-X-6-.12, Securities Commission; Exempt Securities and Exempt Transactions: Further Limited Offering Exemption.

LIBRARY REFERENCES

American Digest System:

Securities Regulation  248-269, 270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 3, 379-411, 414.

RESEARCH REFERENCES

Forms

Alabama Corporation Law with Forms § 13:36, Restrictions on the Right to Dispose of Corporate Securities.

Treatises and Practice Aids

Alabama Rules of Civil Procedure Annotated Rule 4.2, Process: Basis for and Methods of Out-Of-State Service.

Blue Sky Law § 7:4, Contrast Between Nonissuer Concept and Rule 144.

Blue Sky Law § 10:71, in Connection With Requirement.

Blue Sky Law Appendix F, Appendix F. Summary of Blue Sky Exemptions Corresponding to Regulation D.

ANNOTATIONS

CASENOTES

Construction and application 1
Jurisdiction 4
Limit on number of offerees 2
Time limit for judicial review 3

1. Construction and application

Narrow construction of exemption from registration requirements. Given the beneficent purpose of the blue sky laws, the exemption from registration requirements is to be narrowly construed. *Gilford Partners v. Pizitz*, 630 So.2d 404 (Ala.1993), rehearing denied, certiorari denied 114 S.Ct. 2672, 512 U.S. 1204, 129 L.Ed.2d 808.

2. Limit on number of offerees

Limit of 10 offerees applies to nonresidents and to residents of Alabama. *Upton v. Trinidad Petroleum Corp.*, 468 F.Supp. 330 (N.D.Ala.1979), affirmed 652 F.2d 424.

3. Time limit for judicial review

The clear language of the securities act appears to allow the commission to maintain jurisdiction over its previous orders until the time for judicial review of those orders expires. The time for filing an action in the circuit court does not begin to run until after the commission has issued a final order after holding a public hearing. Also, the statute does not specifically enumerate time limitations during which a hearing must be requested by an aggrieved party. *Doggett v. Alabama Securities Com'n*, 511 So.2d 204 (Ala.Civ.App.1987).

4. Jurisdiction

Cited in *Nair v. Joshi*, 578 So.2d 1296 (Ala.1991).

Where sale of an unregistered security caused a "tortious injury," and the sale occurred in Alabama, limited partnership had sufficient contacts with this State because it may be legally responsible for causing tortious injury or damage by its act or omission in this state. *Gilford Partners v. Pizitz*, 630 So.2d 404 (Ala.1993), rehearing denied, certiorari denied 114 S.Ct. 2672, 512 U.S. 1204, 129 L.Ed.2d 808.

§ 8-6-12. Registration of securities -- Applicability of provisions of article; consent to service of process on secretary of state. [Historical Notes](#) [References](#)

- (a) The provisions of this article shall apply to persons who sell or offer to sell when
 - (1) an offer to sell is made in this state, or
 - (2) an offer to buy is made and accepted in this state.
- (b) The provisions of this article shall apply to persons who buy or offer to buy when
 - (1) an offer to buy is made in this state, or
 - (2) an offer to sell is made and accepted in this state.
- (c) An offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer

- (1) originates from this state, or
 - (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- (d) An offer to buy or to sell is accepted in this state when acceptance
- (1) is communicated to the offeror in this state, and
 - (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e)

(1) Every applicant for registration as a dealer or salesman under this article and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the security commission, in such form as it prescribes, an irrevocable consent appointing the secretary of state to be his attorney to receive service of any lawful process in any noncriminal action or proceeding against him, or his successor, executor, or administrator, which arises under this article or any rule or order hereunder after the consent has been filed with the same force and validity as if served personally on the person filing the consent.

(2) A person who has filed such a consent in connection with a previous registration need not file another.

(3) Service may be made by leaving a copy of the process in the office of the secretary of state, but it is not effective unless:

a. The plaintiff, who may be the securities commission, in an action or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commission, and

b. The plaintiff's affidavit of compliance with this clause is filed in the case on or before the return day of the process, if any, or within such further time as the court allows; provided however, that this subsection shall not apply to an issuer whose securities are registered by coordination with the commission.

(Acts 1959, No. 542, p. 1318, § 12; Acts 1979, No. 79-462, p. 827, § 5; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Acts 1979, No. 79-462, § 10, provides that all proceedings pending and all rights and liabilities existing, acquired or incurred on July 30, 1979, are hereby saved and may be consummated according to the law in force when they were commenced. This act shall not be construed to affect any prosecution pending or begun before July 30, 1979. The enactment of subsections (a), (b), (c) and (d) of § 8-6-12 shall not be construed to imply that the Securities Act of Alabama had no application in the circumstances now set forth in subsections (a), (b), (c) and (d) of § 8-6-12 prior to the enactment of those subsections. Subsections (a), (b), (c) and (d) of § 8-6-12 shall be supplements to, and not in derogation of, any administrative or judicial interpretation which may have existed prior to the enactment of those subsections.

REFERENCES

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-6-.11, Securities Commission; Exempt Securities and Exempt Transactions: Limited Offering Exemption.

21 Ala. Admin. Code 830-X-6-.12, Securities Commission; Exempt Securities and Exempt Transactions: Further Limited Offering Exemption.

LIBRARY REFERENCES

American Digest System:

Securities Regulation  248-269.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 3, 379-409.

RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Rules of Civil Procedure Annotated Rule 4.2, Process: Basis for and Methods of Out-Of-State Service.

§ 8-6-13. False filings. Repealed by Acts 1977, No. 607, p. 812, § 9901, as amended, effective January 1, 1980. § 8-6-14. Filing or registration not finding of truth, completeness, etc., of documents; representations concerning effect of registration or exemption. [References](#)

(a) Neither the fact that an application for registration under Section 8-6-3 or a registration statement under Sections 8-6-5, 8-6-6 or 8-6-7 has been filed, nor the fact that a person or security is effectively registered constitutes a finding by the Securities Commission that any document filed under this article is true, complete, and not misleading.

(b) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Securities Commission has passed in any way upon the merits or qualifications of or recommended or given approval to any person, security, or transaction.


(c) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

(Acts 1959, No. 542, p. 1318, § 14; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270, 272.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 374, 410-411, 414.

§ 8-6-15. Investigations and subpoenas by commission. [References](#)

(a) The Securities Commission, in its discretion, may:

(1) Make such public or private investigations within or outside of this state as he deems necessary to determine whether any registration in the sale of securities should be granted, denied, or revoked, whether any person has violated or is about to violate any provision of this article or any rule or order hereunder, to aid in the enforcement of this article or in the prescribing of rules and forms hereunder;

(2) Require or permit any person to file a statement in writing, under oath, or otherwise as the commission may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish information concerning any violation of this article or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this article, the Securities Commission or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commission deems relevant or material to the inquiry.

(c) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction may issue, upon application by the Securities Commission, to that person an order requiring him to appear before the commission or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the Securities Commission or in obedience to the subpoena of the commission or any officer designated by it, in any proceeding instituted by the commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(Acts 1959, No. 542, p. 1318, § 15; Acts 1969, No. 605, p. 1093, § 6; Acts 1990, No. 90-527, p. 772, § 1.)


REFERENCES

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-2-.04, Securities Commission; General Rules: Nondisclosure of Information Obtained in the Course of Examinations and Investigations.

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270, 274.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 413-415.

§ 8-6-16. Administrative cease and desist authority to commission; injunctive relief;

Whenever it appears to the Securities Commission that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or any rule or order hereunder, it may, in its discretion, do either or both of the following:

(a) Issue a cease and desist order, with or without a prior hearing, against the person or persons engaged in the prohibited activities, directing them to cease and desist from engaging in the act or practice.

(b) Bring an action in its discretion in any court of competent jurisdiction to enjoin the act or practice and to enforce compliance with this article or any rule or order issued hereunder.

Upon a proper showing, a permanent injunction, temporary restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing by the commission, the court may enter an order of rescission, restitution, or disgorgement directed at any person who has engaged in an act constituting a violation of this article or any rule or order adopted or issued pursuant to this article. The Securities Commission shall not be required to post a bond. (Acts 1959, No. 542, p. 1318, § 16; Acts 1990, No. 90-527, p. 772, § 1; Acts 1992, No. 92-524, p. 1059, § 1.)

HISTORICAL NOTES


HISTORY

The 1992 amendment, effective May 18, 1992, in the introductory paragraph, deleted the former subsection (a) designation at the beginning of the paragraph, inserted "in" preceding "or is about to engage," and added "in its discretion, do either or both of the following," added present subdivision (a), added the present subdivision (b) designation, and in present subdivision (b), substituted "to enjoin the act" for "to enjoin any such acts," substituted "practice" for "practices," and inserted "issued," and in the last paragraph, deleted the former subsection (b) designation at the beginning of the paragraph, divided the former single sentence into the present first and third sentences by deleting "but" at the end of the present first sentence, added the present second sentence, and substituted "shall not be required" for "may not be required" in the present last sentence.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270, 275, 291.1-302, 310.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414, 417-427, 429-432, 441-442.

(a) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to:

(1) Employ any device, scheme, or artifice to defraud;

(2) Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) Engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(b) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(1) to employ any device, scheme, or artifice to defraud the other person,

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person,

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subdivision shall not apply to any transaction with a customer of a dealer if such dealer is not acting as an investment adviser in relation to such transaction; or

(4) to engage in dishonest or unethical practices as the commission may define by rule.

(c) In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(d) Except as may be permitted by rule or order of the commission, it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing,

(1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) that no assignment of the contract may be made by adviser without the consent of the other party to the contract; and

(3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(e) Subdivision (d)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subdivision (d)(2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(f) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if,

(1) the commission by rule prohibits custody; or

(2) in the absence of rule, the investment adviser fails to notify the commission that he has or may have custody.

(g) The commission may by rule or order adopt exemptions from subdivision (b)(3) and subdivisions (d)(1), (d)(2) and (d)(3) where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this act.

(Acts 1959, No. 542, p. 1318, § 1; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT

Because section 8-6-17(a) is identical in all respects to SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, other than the insertion of the word, "offer", and thus implies an available remedy for both purchasers and sellers of securities as a complement to the express remedies of section 8-6-19, no further revisions to section 8-6-17(a) were deemed necessary to effectuate the remedial purposes of the Act.

Subsections 8-6-17(b)-(g) are added to prohibit fraudulent practices in connection with investment advisory activities. The provisions are based on the NASAA Amendments. Reference should be made to the explanatory comments set forth with respect to section 8-6-3.


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21 Ala. Admin. Code 830-X-6-.11, Securities Commission; Exempt Securities and Exempt Transactions: Limited Offering Exemption.

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Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414, 445-446, 448-450.

RESEARCH REFERENCES

Forms

Alabama Corporation Law with Forms § 10:19, Breach of Duty Through Other Forms of Interested Conduct.

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1. Generally

Laws governing the exchange of securities are commonly referred to as "blue sky laws." *Buffo v. State*, 415 So.2d 1146 (Ala.Crim.App.1980), reversed 415 So.2d 1158, on remand 415 So.2d 1167.

2. Due process

The Alabama supreme court's definition of the elements of this section is binding on federal courts unless that construction surpasses the limits that due process imposes on the construction and application of criminal statutes. One such limitation is fair notice to the defendant. Due process requires that criminal statutes give fair warning to persons of ordinary intelligence of the proscribed conduct and the persons covered. *Buffo v. Graddick*, 1984, 742 F.2d 592.

3. Construction and application

This section requires fraud, an untrue statement of material fact, or failure to state material fact necessary to prevent misleading. *Grant v. Winstead*, 476 So.2d 36 (Ala.1985).

4. Relationship to other laws

This section is similar to statutes dealing with fraud, because it is intended to prohibit all fraudulent schemes in connection with the offer, sale, or purchase of securities. This is true whether or not the artifices employed involve a garden-type variety of fraud, or present a unique form of deception. *Ex parte Day*, 584 So.2d 493 (Ala.1991).

5. Relationship to federal law

This section is identical in all respects, other than the insertion of the word "offer," and that which is necessary to a delineation between the area of sovereignty of Alabama and that of the United States to Rule 10b-5 of the securities and exchange commission (17 C.F.R. § 240.10b-5 (1981)). Therefore, since there are few Alabama cases construing the Alabama securities laws, federal cases should be reviewed to aid in the proper interpretation of the corresponding sections of Alabama statutory law inasmuch as the sections are virtually identical. *Buffo v. State*, 415 So.2d 1158 (Ala.1982); *Buffo v. Graddick*, 742 F.2d 592 (11th Cir. 1984).

Since this section has generally been construed in accordance with federal precedent governing SEC Rule 10b-5 (17 C.F.R. 240.10b-5), a marked departure by the Alabama supreme court from that standard would violate due process by failing to provide adequate notice of what conduct was criminalized by this section. *Buffo v. Graddick*, 1984, 742 F.2d 592.

This section of the Alabama blue sky statute tracks the language of Rule 10b-5 and, moreover, purchasers of securities clearly have a private cause of action for its violations. *White v. Sanders*, 1981, 650 F.2d 627.

For federal case construing Rule 10b-5 of the securities and exchange commission (17 C.F.R. § 240.10b-5 (1981)) which is virtually identical to this section, see *Buffo v. State*, 415 So.2d 1158 (Ala.1982), on remand 415 So.2d 1167.

Section similar to Rule 10b-5 of securities and exchange commission. This section is in all respects, other than in the insertion of the word "offer" and that which is necessary to a delineation between the area of sovereignty of Alabama and that of the United States, identical with the language of Rule 10b-5 [17 C.F.R. § 240.10b-5] of the securities and exchange commission. *Manson v. State*, 349 So.2d 67 (Ala.Crim.App.1977), certiorari denied 349 So.2d 86.

6. Purpose

This section was intended to prohibit all fraudulent schemes in connection with the offer, sale, or purchase of securities. This is true whether or not the artifices employed involve a garden-type variety of fraud, or present a unique form of deception. Novel or atypical methods should not provide immunity from the securities laws. *Buffo v. State*, 415 So.2d 1158 (Ala.1982), on remand 415 So.2d 1167.

7. Elements of the offense--Generally

For discussion of the threshold determination of the elements of the offense that must be proven to convict under this section, see *Buffo v. Graddick*, 1984, 742 F.2d 592.

8. ---- Scienter, elements of the offense

This section does not require scienter. *White v. Sanders*, 1981, 650 F.2d 627.

Knowledge that act violates the securities laws, or that the instrument in question is a security, is not relevant. *Bayhi v. State*, 629 So.2d 782 (Ala.Crim.App.1993), certiorari denied.

9. ---- Willful violation, elements of the offense


Conviction for "willful" violation of Securities Act requires proof of the guilty knowledge or mens rea. A "willful" act may be described as one done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. This excludes the concept of criminal liability for a misrepresentation made innocently and by mistake in a prosecution for securities fraud. *Van Antwerp v. State*, 358 So.2d 782 (Ala.Crim.App.1978), certiorari denied 358 So.2d 791.

10. Common-law conversion

Action for common-law conversion. The scheme to defraud that plaintiff described clearly constituted common-law conversion and would be actionable in state court. *Shores v. Sklar*, 1981, 647 F.2d 462, certiorari denied 103 S.Ct. 722, 459 U.S. 1102, 74 L.Ed.2d 949, on remand.

The securities laws allow an investor to rely on the integrity of the market to the extent that the securities it offers to him for purchase are entitled to be in the market place. *Shores v. Sklar*, 1981, 647 F.2d 462, certiorari denied 103 S.Ct. 722, 459 U.S. 1102, 74 L.Ed.2d 949, on remand.

11. Fraud in the inducement

In cases involving claims of fraud in the inducement of a contract affecting interstate commerce, the court must first determine whether the fraud claim is directed solely at the arbitration clause itself. If so, the party opposing arbitration is entitled to a trial involving state law issues relating to the making of the arbitration clause. *Jones v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 604 So.2d 332 (Ala.1991), rehearing denied, entered 662 So.2d 290. Commerce  80.5

If the court concludes that the claim of fraud actually bears upon the entire agreement and upon the activities of the parties in general, the provision of 9 U.S.C. § 2 regarding the revocation of contracts does not preclude the federally created right to specific enforcement of the arbitration clause. Were it otherwise, a skillfully crafted complaint would, in every case, necessitate a trial thus effectively eviscerating the Federal Arbitration Act and circumventing the strong policy favoring arbitration. *Jones v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 604 So.2d 332 (Ala.1991), rehearing denied, entered 662 So.2d 290.

12. Venue--Generally

Under this section, venue could be proper where the state can show that the alleged fraudulent scheme had a detrimental effect within a county. However, if the state cannot make such a showing, any conviction there could not be sustained on appeal. *Ex parte Day*, 584 So.2d 493 (Ala.1991).

13. ---- Conspirators, venue

The law looks upon a conspirator, or one who aids an actual participant in the completed offense, as an actual participant in the completed offense. In other words, such a person is considered a principal; thus, venue for a conspirator's trial is proper where it is proper for the principal's trial. *Ex parte East*, 584 So.2d 496 (Ala.1991).

14. Sufficiency of indictment

Sufficiency of indictment. See *Manson v. State*, 349 So.2d 67 (Ala.Crim.App.1977), certiorari denied 349 So.2d 86.

15. Sufficiency of evidence

Cited in *Alabama Bancorporation v. Henley*, 465 F.Supp. 648 (N.D.Ala.1979); *Gray v. State*, 389 So.2d 1163 (Ala.Crim.App.1980); *Graddick v. State*, 408 So.2d 533 (Ala.Crim.App.1981); *Foster v. Jesup & Lamont Sec. Co.*, 759 F.2d 838 (11th Cir. 1985); *Foster v. Jesup & Lamont Sec. Co.*, 482 So.2d 1201 (Ala.1986); *Banton v. Hackney*, 557 So.2d 807 (Ala.1989); *Robbins v. Paine Webber, Inc.*, 761 F.Supp. 773 (N.D.Ala.1991).

There was sufficient evidence from which the jury could have properly found that appellants willfully violated subdivisions (a)(1) through (3), i.e., that they had the requisite intent to commit the fraudulent acts charged in the fraud counts of the indictments. *Bayhi v. State*, 629 So.2d 782 (Ala.Crim.App.1993), certiorari denied.

Evidence was sufficient to sustain appellant's convictions for aiding and abetting securities fraud. *Bayhi v. State*, 629 So.2d 782 (Ala.Crim.App.1993), certiorari denied. Securities Regulation ☒ 328

Since a surplus note can only be paid from surplus from a company, and since there was no real expectation of insurance company having a surplus or being able to generate income, having sold its insurance policies, the entire transaction whereby surplus note was issued to investor was a sham, and thus the state clearly presented a prima facie case under this section and the trial court correctly allowed the cause to go to the jury. *Hayes v. State*, 507 So.2d 982 (Ala.Crim.App.1986), writ quashed 507 So.2d 995, certiorari denied 108 S.Ct. 161, 484 U.S. 855, 98 L.Ed.2d 116.

Evidence in securities fraud case which showed that defendant was in charge of depositing investors' funds in the escrow account, that defendant commingled investors' funds with funds to be used for the operating expenses of corporation, that defendant, without authorization, used the funds in the operating expense account for his own personal expenses, and that investors' demand for refunds were not met and, in some cases, the inquiries went unanswered was sufficient to support conviction for securities fraud. *Gray v. State*, 364 So.2d 694 (Ala.Crim.App.1978). Securities Regulation ☒ 328

§ 8-6-18. Criminal penalties for violations of article; limitation on prosecution; enforcement of article; proof of scienter not required in certain proceedings.

[Historical Notes](#) [References](#) [Annotations](#)

(a) Any person who willfully violates any provisions of this article shall, upon conviction, be guilty of a Class C felony. No prosecution may be commenced under this article more than five years after the alleged violation.

(b) Any person who willfully violates any rule or order under this article shall, upon conviction, be guilty of a Class A misdemeanor.

(c) The enforcement of the provisions of this article shall be vested in the Securities Commission. It shall be the duty of the commission to see that its provisions are at all times obeyed and to take such measures and to make such investigations as will prevent or detect the violation of any provision thereof. The commission shall at once lay before the district attorney of the proper county any evidence which shall come to its knowledge of criminality under this article. In the event of the neglect or refusal of the district attorney to institute and prosecute such violation, the commission shall be authorized to proceed therein with all the rights, privileges, and powers conferred by law upon district or court attorneys including the power to appear before grand juries and to interrogate witnesses before such grand juries.

(d) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

(e) In any proceeding under this article, scienter need not be alleged and proved in prosecutions involving the sale of unregistered securities or in the failure to register as a dealer, agent, investment adviser, or investment adviser representative under this article. (Acts 1959, No. 542, p. 1318, § 17; Acts 1969, No. 605, p. 1093, § 7; Acts 1971, No. 2243, p.

3598, § 3; Acts 1979, No. 79-462, p. 827, § 6; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT

References are made in subsections 8-6-18(a) and (b) to Class C felonies and Class A misdemeanors to conform these penal provisions of the Act to the criminal code. See Ala. Code §§ 13A-5-6, 13A-5-7, 13A-5-11, and 13A-5-12.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 270, 325.1-329.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414, 448-452.

ANNOTATIONS

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Powers of the commission 1, 2

 Powers of the commission - Generally 1

 Powers of the commission - Cease and desist orders 2

Scienter 4

Willful violation 3

1. Powers of the commission--Generally

Broad powers of the commission. The language of this section indicates that the legislature intended to give broad powers to the commission. *Alabama Securities Com'n v. American Business Club*, 612 So.2d 1237 (Ala.Civ.App.1992), certiorari denied.

2. ---- Cease and desist orders, powers of the commission

Issuance of cease and desist orders. The trial court erred in holding that the Alabama Security Commission lacked the authority to issue cease and desist orders to prevent the violation of the Alabama Securities Act. *Alabama Securities Com'n v. American Business Club*, 612 So.2d 1237 (Ala.Civ.App.1992), certiorari denied.

3. Willful violation

In securities fraud cases, the term "willfully" in subsection (a) necessarily "requires proof of the guilty knowledge or mens rea." *Favor v. State*, 389 So.2d 556 (Ala.Crim.App.1980).

Conviction for "willful" violation of Securities Act requires proof of the guilty knowledge or mens rea. A "willful" act may be described as one done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. This excludes the concept of criminal liability for a misrepresentation made innocently and by mistake in a prosecution for securities fraud. *Van Antwerp v. State*, 358 So.2d

782 (Ala.Crim.App.1978), certiorari denied 358 So.2d 791.

4. Scienter

Cited in Deason v. State, 380 So.2d 373 (Ala.Crim.App.1980); Gray v. State, 389 So.2d 1163 (Ala.Crim.App.1980); Graddick v. State, 408 So.2d 533 (Ala.Crim.App.1981); Buffo v. State, 415 So.2d 1146 (Ala.Crim.App.1980); Newberry v. State, 493 So.2d 995 (Ala.1986).

However, subsection (e) expressly indicates that the legislature did not intend for "scienter" to be an element of these offenses; therefore, subsection (e) of this section reflects the legislature's intention for these offenses to be mala prohibita rather than mala in se. Favor v. State, 389 So.2d 556 (Ala.Crim.App.1980).

§ 8-6-19. Civil liabilities of sellers, agents, etc.; remedies of purchasers. [Historical Notes](#) [References](#) [Annotations](#)

(a) Any person who:

(1) Sells or offers to sell a security in violation of any provision of this article or of any rule or order imposed under this article or of any condition imposed under this article, or

(2) Sells or offers to sell a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission, is liable to the person buying the security from him who may bring an action to recover the consideration paid for the security, together with interest at six percent per year from the date of payment, court costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six percent per year from the date of disposition.

(b)

(1) Any person who engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities in violation of subsection (b), (c), (d), (e), or (f) of Section 8-6-17, subsection (b) or (c) of Section 8-6-3, Section 8-6-14, is liable to that person, who may bring an action to recover the consideration paid for such advice and any loss due to such advice, together with interest at six percent per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

No person may maintain an action hereunder pursuant to a violation of subsection (c) of Section 8-6-3 based solely on the fact that an investment adviser representative other than the one from whom the person received advice is unregistered.

(2) Any person who receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports, or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such other person, is liable to that person,

who may bring an action to recover the consideration paid for such advice and any loss due to such advice, together with interest at six percent per year from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such advice.

An action based on a violation of subsection (c) of Section 8-6-17 and this section may not prevail where the person accused of the violation sustains the burden of proof that he did not know, and in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(c) Every person who directly or indirectly controls a person liable under subsections (a) or (b) of this section, including every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the conduct giving rise to the liability, and every dealer or agent who materially aids in such conduct is also liable jointly and severally with and to the same extent as the person liable under subsection (a) or (b), unless he is able to sustain the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(d) Any tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this section survives the death of any person who might have been a plaintiff or defendant.

(f) No person may obtain relief under this section in an action involving the failure to register unless suit is brought within two years from the date of sale. All other actions for relief under this section must be brought within the earlier of two years after discovery of the violation or two years after discovery should have been made by the exercise of reasonable care. No person may bring an action under subsection (a) of this section:

(1) If the buyer received a written offer, before the action and at a time when he owned the security, to refund the consideration paid together with interest at six percent per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within 30 days of its receipt, or

(2) If the buyer received such an offer before the action and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt.

(g) No person who has made or engaged in the performance of any contract in violation of any provision of this article or any rule or order hereunder or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any action on the contract.

(h) Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of this article or any rule or order hereunder is void.

(i) The rights and remedies provided by this article are in addition to any other rights or remedies that may exist.

(j)

(1) The commission may by order, if it finds such order to be in the public interest, impose an administrative assessment upon any person who violates any provision of this article or any rule or order issued under this article.

(2) Any administrative assessment imposed under this section shall not exceed \$5,000 for each act or omission that constitutes the basis for an order issued under this section, except that the amount of the administrative assessment may not exceed \$50,000 for any person

subject to the order.

(3) For the purposes of determining the amount or extent of an administrative assessment, if any, to be imposed under this section, the commission shall consider among other factors, the frequency, persistence, and willfulness of the conduct constituting a violation of any provision of this article or any rule or order issued under this article, and the number of persons adversely affected by the conduct.

(4) The administrative assessment under this section is in addition to any other penalty, remedy, or sanction that may be imposed under this article.

(5) All assessments collected under this subsection (j) of Section 8-6-19 shall be deposited in the general fund of the state.

(k)

(1) The commission may charge, in addition to any administrative assessment, fine, penalty, remedy, or sanction imposed under this article, the actual cost of any investigation resulting from any violation of any provision of this article or any violation of any rule or order issued under this article or the actual cost of any examination made by the commission pursuant to this article, to the party or parties subject to such investigation or examination. Such charge may include, but is not limited to, a per diem prorated upon the salary cost of any employee of the commission together with actual travel, housing and any and all other reasonable expenses incurred as a result of such investigation or examination.

(2) All charges assessed for costs involved pursuant to subdivision (1) of subsection (k) of Section 8-6-19 shall be deposited in the Alabama Securities Commission Fund in the state treasury to be drawn upon by the commission for its use in the administration of this article. (Acts 1959, No. 542, p. 1318, § 18; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT

Subsection 8-6-19(b) is added to provide civil liabilities for prohibited acts in connection with investment advisory activities. The provisions are based on the NASAA Amendments. Reference should be made to the explanatory comments made with respect to section 8-6-3. Subdivision 8-6-19(b) (2) establishes civil liability for any person who willfully engages in the conduct proscribed therein.

Subsection 8-6-19(f) sets forth a statute of limitations applicable to the civil liability provisions of this article. It amends prior subsection 8-6-19(e) which simply provided a two-year statute of limitations, and distinguishes between causes of action based on failure to register securities as required under the Act and other causes of action in which the factual predicates often are concealed or difficult to detect. This provision is not to be construed in derogation of any applicable principles of equitable tolling or fraudulent concealment, but to assure that the policies of the act are liberally construed to effectuate its remedial purposes.

REFERENCES

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-3-.06, Securities Commission; Registration of Dealers, Agents, Investment Advisers and Investment Adviser Representatives: Net Capital Required.

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Alabama Law of Damages § 14:18, Wrongful Sale or Offer.

Alabama Personal Injury and Torts § 1:19, Proximate Cause -- Miscellaneous.

Alabama Personal Injury and Torts § 12:57, Securities Fraud.

Blue Sky Law § 9:41, Generally.

ANNOTATIONS**CASENOTES**

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1. Construction and application

Possibility that National Association of Securities Dealers (NASD) arbitration panel may have misapplied or misunderstood state statute allegedly mandating award of attorney fees upon finding of unauthorized trading under state's securities laws did not constitute manifest disregard of law, so as to justify vacatur or modification of award in order to add attorney fees; prevailing parties seeking modification had failed to submit evidence to panel in form of testimony, affidavits or exhibits admitted in evidence to support claim for attorney fees. *Isenhower v. Morgan Keegan & Co., Inc.*, 311 F.Supp.2d 1319 (M.D.Ala.2004). Arbitration ☒ 91

Subsection (b) of this section imposes liability on a group of participants in securities transactions beyond the seller. *Foster v. Jesup and Lamont Securities Co., Inc.*, 482 So.2d 1201 (Ala.1986), answer to certified question conformed to 782 F.2d 901.

2. Relationship to federal law

National Association of Securities Dealers (NASD) arbitration award was not modifiable

under Federal Arbitration Act's stated grounds for modification of awards, for purpose of adding attorney fees, interest and costs allegedly owing to prevailing parties under state securities statute; there was no evidence supporting FAA's stated bases for modification, namely evident material miscalculation of figures, award upon matter not submitted, or award imperfect in matter of form. *Isenhower v. Morgan Keegan & Co., Inc.*, 311 F.Supp.2d 1319 (M.D.Ala.2004). Arbitration ☒ 91

Alabama courts have looked to federal case law construing § 12(2) of the 1933 Securities Act in interpreting this section. *Ryder Intern. Corp. v. First American Nat. Bank*, 749 F.Supp. 1569 (N.D.Ala.1990), affirmed 943 F.2d 1521.

Subsection (a) is similar to federal laws. Subsection (a) of this statute is very similar to both § 12(2) of the Securities Act of 1933 and § 410(a)(2) of the Uniform Securities Act; there is no requirement in § 12(2) or this section that a plaintiff under these statutes prove "intent" to defraud as an element of his claim; § 12(2) and this section are "strict liability" statutes; there need be no showing of "reckless disregard" for the truth of a representation or that such representations were "knowingly" made. *Banton v. Hackney*, 557 So.2d 807 (Ala.1989), rehearing denied.

Federal act compared. This section is patterned in part on § 12(2) of the federal Securities Act of 1933, particularly subsection (a). Subsection (b), however, is substantially different and considerably broader than § 12 of the Securities Act of 1933. *Foster v. Jesup and Lamont Securities Co., Inc.*, 482 So.2d 1201 (Ala.1986), answer to certified question conformed to 782 F.2d 901.

3. Relationship to Uniform Securities Act

Subsection (b) of this section is based almost verbatim on § 410-(b) of the Uniform Securities Act, adopted in Alabama in 1959. *Foster v. Jesup and Lamont Securities Co., Inc.*, 482 So.2d 1201 (Ala.1986), answer to certified question conformed to 782 F.2d 901.

4. Elements of action

Causation is not an element of securities buyer's suit for violation of rule requiring seller to have reasonable grounds to believe that a recommendation is suitable; thus, the buyer need not show that the violation induced or caused the purchase. *Ritch v. Robinson-Humphrey Co.*, 748 So.2d 861 (Ala.1999), answer to certified question conformed to 210 F.3d 1340. Securities Regulation ☒ 278

"Intent" need not be proven before a plaintiff may recover under this section; the defendant's state of mind should be relevant only insofar as it relates to his possible defenses under the statute. The seller has the affirmative defenses of lack of knowledge of falsity and the buyer's knowledge of falsity; the defendant's state of mind is not otherwise relevant. *Banton v. Hackney*, 557 So.2d 807 (Ala.1989), rehearing denied.

5. Negligent conduct

This section of the Alabama blue sky statute allows recovery for mere negligence in connection with the sale of a security. *White v. Sanders*, 1981, 650 F.2d 627.

This section, patterned in part on § 12(2) of the Securities Act of 1933, 15 USC § 77a et seq., allows recovery for negligent conduct. *First Federal Sav. and Loan Ass'n of Miami v. Mortgage Corp. of South*, 467 F.Supp. 943 (N.D.Ala.1979), affirmed 650 F.2d 1376.

6. Recovery of consideration

Subsection (a) allows a shareholder to recover the consideration paid for fraudulently induced purchase of stock upon the tender of such stock. The availability of this remedy does not deprive a party of the equitable remedy of issuance of shares in the corporation corresponding to their investment therein. *Clark v. Cowart*, 445 So.2d 884 (Ala.1984).

7. Sale of security

The sale of all of the capital stock of a corporation is the sale of a "security" for the purposes of civil liability under this section. *Banton v. Hackney*, 557 So.2d 807 (Ala.1989), rehearing denied. Securities Regulation ☒ 249.1

8. Materially aiding unlawful sale

Under the facts, a jury was justified in finding that a securities firm "materially aided" an unlawful sale of a security, and was therefore secondarily liable under subsection (b) of this section. *Foster v. Jesup and Lamont Securities Co., Inc.*, 482 So.2d 1201 (Ala.1986), answer to certified question conformed to 782 F.2d 901.

9. Statute of limitations

In an action for fraud, the statute of limitations begins to run "when the aggrieved party has either actual knowledge of the violation or notice of facts which, in the exercise of due diligence, would have led to actual knowledge thereof." *First Federal Sav. and Loan Ass'n of Miami v. Mortgage Corp. of South*, 1981, 650 F.2d 1376. Limitation Of Actions ☒ 100(6); Limitation Of Actions ☒ 100(11)

Failure to discover one aspect of alleged fraud was not sufficient to delay running of the statute. *First Federal Sav. and Loan Ass'n of Miami v. Mortgage Corp. of South*, 1981, 650 F.2d 1376.

The two-year limitations period prescribed by the Alabama "blue sky" law is the appropriate choice for a cause of action under the federal securities laws. *First Federal Sav. and Loan Ass'n of Miami v. Mortgage Corp. of South*, 1981, 650 F.2d 1376.

Application of specific limitations period better effectuates policy. The Alabama Blue Sky Law bears the closer substantive resemblance to § 10(b) and Rule 10b-5, the Securities and Exchange Act of 1934, 15 USC § 78j(b) and the application of its specifically-prescribed limitations period, rather than the "catch-all" provision relating to general fraud actions, better effectuates the federal policy involved. *White v. Sanders*, 1981, 650 F.2d 627.

A federal court must adopt the limitations period which the forum state applies to the state cause of action bearing the closest substantive resemblance to the implied cause of action arising under the federal provisions. *White v. Sanders*, 1981, 650 F.2d 627.

Whether claim under Alabama securities laws, which was brought against bank by purchasers of annuities, was barred by statute of limitations could not be resolved at motion to dismiss phase because of factual dispute as to when purchasers learned or reasonably could have learned of bank's alleged involvement to defraud bank customers into buying non-depository investment products. *Fischler v. AmSouth Bancorporation*, M.D.Fla.1997, 971 F.Supp. 533. Federal Civil Procedure ☒ 1831

The federal securities law contains no statute of limitations for Rule 10b-5 claims; therefore, a court must look to the law of the forum state for the closest substantive state cause of action

and graft the statute of limitations from that cause of action onto the federal securities fraud claim. The primary distinction between the Alabama Blue Sky law and the federal securities law Rule 10b-5 claim, namely, that the Alabama securities fraud remedies can only be sought by a purchaser, whereas the federal remedy is open to both sellers and purchasers, is of no moment, and thus the applicable statute of limitations for the federal securities law claims is two years. *Hunt v. American Bank & Trust Co. of Baton Rouge, La.*, 606 F.Supp. 1348 (N.D.Ala.1985), affirmed 783 F.2d 1011.

10. Summary judgment

Summary judgment was erroneously entered on a claim under the Securities Act of Alabama; questions of intent and of the materiality of statements that induced a plaintiff to act are rarely subject to determination as a matter of law on a motion for summary judgment. *Banton v. Hackney*, 557 So.2d 807 (Ala.1989), rehearing denied.

11. Remedies

A rescission-type remedy is allowable under this section. *White v. Sanders*, 1981, 650 F.2d 627.

The antecedent immediately preceding the phrase containing the knowledge requirement in civil remedies provision of Securities Act is a "person who has acquired any purported right under any contract [in violation of any provision of the Act];" construing statute in favor of the public, there was no reason to apply the knowledge requirement to the more remote antecedent, that is, to a "person who has made or engaged in the performance of any contract in violation of any provision of [the Act]." *Securities America, Inc. v. Rogers*, 850 So.2d 1252 (Ala.2002), rehearing denied, certiorari denied 124 S.Ct. 83, 540 U.S. 818, 157 L.Ed.2d 35. Securities Regulation ☒ 292

11.5. Attorney fees

National Association of Securities Dealers (NASD) arbitration panel's failure to award attorney fees after finding unauthorized trading under state's securities laws, allegedly in contravention of state statute's mandatory attorney fee provision, was not contrary to public policy so as to permit vacatur or modification; failure to award attorney fees did not compel either party to take action that conflicted with public policy. *Isenhower v. Morgan Keegan & Co., Inc.*, 311 F.Supp.2d 1319 (M.D.Ala.2004). Arbitration ☒ 91

Investors' attorney fees were part of their "damages" in suit under Securities Act, even though the investors had sold their mutual fund shares; the Act defined damages as the "amount that would be recoverable upon a tender," and attorney fees were included in that amount whether or not the investors sold the security. *Morgan Keegan & Co., Inc. v. Cunningham*, 918 So.2d 897 (Ala.2005), rehearing denied. Securities Regulation ☒ 309

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12. Review--Generally

Court of Appeals would not consider appellants' contention that prevailing defendant violated second provision of state securities statute, where appellants did not object at trial or on appeal to district court's decision to instruct jury solely on theory that defendant violated first provision of statute. *Ritch v. Robinson-Humphrey Co.*, 1998, 142 F.3d 1391, certified question answered 748 So.2d 861, answer to certified question conformed to 210 F.3d 1340. Federal Courts ☒ 630.1

13. ---- Remand for new trial, review

Following determination, on Court of Appeals' certification to Alabama Supreme Court, that causation was not a required element to establish a claim under Alabama Securities Act alleging that a brokerage firm made an "unsuitable" investment recommendation, investors were entitled to new trial on their claim against brokerage firm under the Act, where jury instructions stated that causation was a required element. *Ritch v. Robinson-Humphrey Co., Inc.*, 2000, 210 F.3d 1340. Federal Courts ☒ 944

Cited in *Ayers v. Wolfinbarger*, 491 F.2d 8 (5th Cir.1974); *Alabama Bancorporation v. Henley*, 465 F.Supp. 648 (N.D.Ala.1979); *Upton v. Trinidad Petro. Corp.*, 652 F.2d 424 (5th Cir.1981); *Alabama Waterproofing Co. v. Hanby*, 431 So.2d 141 (Ala.1983); *Lloyd v. Professional Realty Servs., Inc.*, 734 F.2d 1428 (11th Cir.1984); *Foster v. Jesup & Lamont Sec. Co.*, 759 F.2d 838 (11th Cir.1985); *Hunt v. American Bank & Trust Co.*, 783 F.2d 1011 (11th Cir.1986); *Grayco Resources, Inc. v. Poole*, 500 So.2d 1030 (Ala.1986); *Robbins v. Paine Webber, Inc.*, 761 F.Supp. 773 (N.D.Ala.1991).

Cited in *Morrison v. Franklin*, 655 So.2d 964 (Ala.1995).

§ 8-6-20. Sale of securities of insolvent issuer deemed embezzlement. Repealed by Acts 1977, No. 607, p. 812, § 9901, as amended, effective January 1, 1980. [References](#)

REFERENCES

CROSS REFERENCES

As to embezzlement generally, see § 13A-8-2.

§ 8-6-21. Commission authorized to swear out warrants of arrest; liability of commission for warrant. [References](#)

The Securities Commission is authorized and empowered to swear out warrants of arrest against any person violating the criminal provisions of this article, and it shall not be liable in damages or to an action for damages by reason of swearing out warrants or for causing the arrest and detention or imprisonment of any person or persons under such warrant or warrants. (Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-22. Duties of director; director empowered to swear out warrants of arrest; liability of director for warrant. [References](#)

The Director of the Securities Commission shall keep the records of the commission and generally perform such duties as the commission may direct. When ordered by the commission, he shall be authorized and empowered to swear out warrants of arrest against any person violating the criminal provisions of this article. He shall not be liable in damages or to an action for damages by reason of swearing out such warrant or warrants or for causing the arrest, detention, or imprisonment of any person or persons under such warrant or warrants. (Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-23. Making, amending, and rescinding rules and prescribing forms by commission.

[References](#)

The Securities Commission may from time to time make, amend, and rescind such rules and prescribe such forms as are necessary and desirable to carry out the provisions of this article. No rules or forms may be made or prescribed unless the commission finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this article. In prescribing rules and forms the commission may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this article to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the commission shall be published. (Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-1-.05, Securities Commission; Organization and General Operation: Formal and Informal Procedures.

21 Ala. Admin. Code 830-X-1-.07, Securities Commission; Organization and General Operation: Petitions to Initiate Rule-Making Proceedings.

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-24. Liability for acts done or omitted in good faith under rules, forms, or orders.

References

No provision of this article imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Securities Commission, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-25. Hearings to be public; requests for private hearings. [References](#)

Every hearing in an administrative proceeding shall be public unless the Securities Commission, in its discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-26. Document deemed filed when received. [References](#)

A document is deemed filed when it is received by the Securities Commission.
(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-2-.03, Securities Commission; General Rules: Filing of Material with the Commission.

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-27. Commission to keep register; register to be open for public inspection. [References](#)

The Securities Commission shall keep a register of all applications for registration and registration statements which are or have ever been effective under this article and all denial, suspension, or revocation orders which have ever been entered under this article. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commission prescribes.

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270, 272.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 374, 410-411, 414.

§ 8-6-28. Commission to furnish copies of register entries or documents; certified copy deemed prima facie evidence. [References](#)

Upon request and at such reasonable charges as it prescribes, the Securities Commission shall furnish to any person photostatic or other copies, certified under its seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this article, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 270, 272.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 374, 410-411, 414.

§ 8-6-29. Interpretative opinions by commission. [Historical Notes](#) [References](#)

(a) The Securities Commission, in its discretion, may honor requests from interested persons for interpretative opinions and no-action letters.

(b) Any person who makes application to the Securities Commission for an interpretative opinion or no-action letter shall be assessed a non-refundable filing fee of \$150 upon application for such opinion or letter. Fees collected under this section shall be deposited in the Alabama Securities Commission Fund in the state treasury to be drawn upon by the commission for its use in the administration of this article.

(Acts 1959, No. 542, p. 1318, § 20; Acts 1990, No. 90-527, p. 772, § 1.)

HISTORICAL NOTES

COMMENT

The securities commission has the authority under this section to issue interpretive opinions and no-action letters, but is not, in any event, required to do so. Although in many instances clarification of the commission's position on a particular matter may be desirable, decisions whether to do so, as well as any limitations or conditions which may be imposed, are committed to the discretion of the commission.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-30. Burden of proving exemption or exception from definition. [References](#)

In any proceeding under this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(Acts 1959, No. 542, p. 1318, § 21; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 270, 307, 327.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414, 437, 449-450.

§ 8-6-31. Commission may issue warnings to public and publish information regarding orders. [References](#)

The Securities Commission may issue and give warnings to the public concerning securities being sold in this state and may in its discretion cause to be published information regarding any orders or rules issued by the commission in the implementation of its duties, including, without limitation, information pertaining to specific orders denying registration or prohibiting the sale of securities.

(Acts 1959, No. 542, p. 1318, § 25; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270, 272.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 374, 410-411, 414.

§ 8-6-32. Party aggrieved by order entitled to hearing before commission; appeals from action of commission. [References](#) [Annotations](#)

(a) Any person aggrieved by an order issued under this article shall be entitled to a hearing pursuant to the provisions of the Alabama Administrative Procedure Act (Section 41-22-1 et seq.) pertaining to "contested cases," if such person, within 28 days after delivery of the order, submits a written request for a hearing before the commission. The order shall disclose the right to a hearing upon written request within 28 days after delivery of the order. If no timely request for a hearing is made, the order shall constitute a final order of the commission.


(b) Any appeal from any final order of the commission shall be made to the circuit court of Montgomery County and shall be governed by the provisions of the Alabama Administrative Procedure Act pertaining to judicial review.

(Acts 1959, No. 542, p. 1318, § 19; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270, 275.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414, 417.

ANNOTATIONS

CASENOTES

Construction and application 1

Time for filing for judicial review 2

1. Construction and application

Subsections (a) and (b) provide for the sole method of judicial review of actions before the securities commission. Thus, these provisions, rather than the provisions of the Alabama Administrative Procedure Act, govern the manner of review in cases involving securities commission actions with respect to securities. *Doggett v. Alabama Securities Com'n*, 511 So.2d 204 (Ala.Civ.App.1987).

2. Time for filing for judicial review

The clear language of the securities act appears to allow the commission to maintain jurisdiction over its previous orders until the time for judicial review of these orders expires. The time for filing an action in the circuit court does not begin to run until after the commission has issued a final order after holding a public hearing. Also, the statute does not specifically enumerate time limitations during which a hearing must be requested by an aggrieved party. *Doggett v. Alabama Securities Com'n*, 511 So.2d 204 (Ala.Civ.App.1987).

§ 8-6-33. Disposition of revenue. [References](#)

All moneys accruing to or collected by or through the Securities Commission shall be deposited when collected into the state treasury to the credit of the general fund, unless otherwise provided by law.

(Acts 1959, No. 542, p. 1318, § 27; Acts 1969, No. 605, p. 1093, § 8; Acts 1971, No. 2243, p. 3598, § 4; Acts 1990, No. 90-527, p. 772, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270; States ☒122, 126.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414; States §§ 224, 228.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert - the Law of Trusts and Trustees § 248, Trusts Used Primarily for Business Purposes:
Investment Trusts and Real Estate Investment Trusts.

ARTICLE 2. SECURITIES COMMISSION.

REFERENCES

CROSS REFERENCES

As to duties of securities commission relative to sale of checks, see § 8-7-1 et seq.

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-1-.01 et seq., Securities Commission; Organization and General Operation.

§ 8-6-50. Created; duties generally. [Historical Notes](#) [References](#)

There is created the Alabama Securities Commission, which shall be responsible for the enforcement of laws governing the issuance, sale, and other transactions relative to securities. (Acts 1969, No. 740, p. 1315, § 1.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Acts 1992, No. 92-124, § 2 provides: "The existence and functioning of the Alabama Securities Commission, created and functioning pursuant to Sections 8-6-50 to 8-6-60, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Acts 1996, No. 96-749, § 2 provides: "The existence and functioning of the Alabama Securities Commission, created and functioning pursuant to Sections 8-6-50 to 8-6-60, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."


Act 2000-127, § 2 provides: "The existence and functioning of the Alabama Securities Commission, created and functioning pursuant to Sections 8-6-1 to 8-6-151, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

Act 2004-82, § 2 provides: "The existence and functioning of the Alabama Securities Commission, created and functioning pursuant to Sections 8-6-50 to 8-6-60, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-51. Membership; qualifications and appointment of commissioners; use or disclosure of confidential information by commissioners, employees, etc.; civil liability of commissioners. [Historical Notes](#) [References](#)

(a) The Securities Commission shall consist of the Attorney General of Alabama, the State Superintendent of Banks, the State Superintendent of Insurance and four other members appointed by the Governor by and with the advice and consent of the Senate. Two appointed

members shall be members of the Alabama Bar Association appointed from a list of three nominees for each position submitted by the bar association, and the other two appointed members shall be certified public accountants appointed from a list of three nominees for each position submitted by the Alabama Society of Certified Public Accountants. The membership of the commission shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(b) No person may be appointed to or by the commission while he is registered as a dealer or salesman under Article 1 of this chapter, while he is an officer, director or partner of any person so registered, while he is an officer, director or partner of an issuer which has a registration statement effective under Article 1 of this chapter or while he is occupying a similar status or performing similar functions.

(c) It is unlawful for any member of the commission, the director or any other officer or employee of the commission to use for personal benefit any information which is filed with or obtained by the director and which is not made public. No provision of this article authorizes any member of the commission, the director or any other officer or employee of the commission to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this article. No provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to any member of the commission, the director, or any other officer or employee of the commission.

(d) Except upon proof of corruption, no commissioner shall for his acts or his failure to act be civilly liable to any investor, applicant for registration, or any other person.

(Acts 1969, No. 740, p. 1315, § 2; Acts 1996, No. 96-749, p. 1320, § 3.)

HISTORICAL NOTES


HISTORY

The 1996 amendment, effective May 28, 1996, in subsection (a), substituted "members" for "member" in three instances, in the first sentence substituted "four" for "two", in the second sentence substituted "Two" for "One", inserted "for each position" before "submitted by the bar", inserted "two" after "and the other", deleted "a" preceding "certified public", substituted "accountants" for "accountant", inserted "for each position" before "submitted by the Alabama", and added the third sentence.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-52. Terms of office of appointed members; filling of vacancies; reappointment of

members. [References](#)

(a) The Governor shall biennially appoint one Securities Commission member to serve for a term of four years; provided, however, that the Governor shall designate for the initial appointments one member to serve for a term of two years and one member to serve for a term of four years from their respective dates of appointment and qualification. Upon the expiration of these initial terms, the term of each member shall be four years from the date of his appointment and qualification, until his successor shall qualify; provided further, however, that, on April 4, 1988, no member shall serve more than two consecutive terms of office.

(b) Vacancies shall be filled by the Governor for the unexpired term.

(c) Members shall be eligible for reappointment.

(Acts 1969, No. 740, p. 1315, § 3; Acts 1988, No. 88-137, p. 199, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270; States ☒41.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414; States §§ 88-90, 130-131.

§ 8-6-53. Selection of chair; rules for proceedings; meetings; quorum; records and reports; access to offices and records; exercise of powers of director. [Historical Notes](#) [References](#)

(a) The Securities Commission shall select a chair and may adopt rules for conducting its proceedings.

(b) The commission shall meet quarterly on a date it designates and may meet at other times it deems necessary, or when called by the chair or by any two members. Any three members shall constitute a quorum for transacting commission business.

(c) Complete minutes of each meeting shall be kept and filed in the office of the commission and shall be available for public inspection during reasonable office hours.

(d) The commission shall report annually to the Governor, to the legislature and to the state Legislative Council. The report shall contain the minutes of each meeting held during the year, legislative recommendations, a summary of violations of Article 1 of this chapter, actions taken for those violations, and other data and information deemed necessary or appropriate.

(e) Each member of the commission shall have unrestricted access to all offices and records under the jurisdiction of the commission.

(f) The commission, or a majority of the commission, may exercise any power or perform any act that the director is authorized to perform under this chapter.

(Acts 1969, No. 740, p. 1315, § 4; Acts 1992, No. 92-124, p. 224, § 3.)

HISTORICAL NOTES

HISTORY

The 1992 amendment, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992, substituted "chair and may" for "chairman and is hereby authorized to" in subsection (a); in the first sentence of subsection (b), substituted "quarterly" for "monthly," substituted "a date it designates" for "such date as it may designate," deleted "such" preceding "other times," substituted "it deems necessary" for "as it may deem necessary" and substituted "chair" for "chairman"; in the second sentence of subsection (d), substituted "actions" for "and action," substituted "for those violations" for "thereof," substituted "and" for "in addition to such," and deleted "as may be" preceding "deemed"; in subsection (f), substituted "of the Commission" for "thereof," substituted "that" for "which," and deleted "the provisions of" preceding "this chapter"; and made capitalization changes throughout the section.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-54. Compensation of members. [References](#)

(a) Each appointed member of the Securities Commission shall be paid \$50 per day, for a period not to exceed a total of 60 days in any one calendar year, while engaged in the performance of his duties, and shall receive mileage and per diem as provided by Article 2 of Chapter 7 of Title 36.

(b) Ex officio members shall not be entitled to any extra compensation for performing their duties under this chapter.

(Acts 1969, No. 740, p. 1315, § 5.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270; States ☒60(1), 62.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414; States §§ 47, 104-108.

§ 8-6-55. Director -- Appointment; duties generally. [References](#)

(a) The Securities Commission shall appoint a full-time director who shall be a career employee subject to the provisions of the Alabama Merit System Law and whose employment may be terminated only for cause.

(b) The director shall administer the provisions of Article 1 of this chapter under the supervision of the commission and in accordance with its policies.

(Acts 1969, No. 740, p. 1315, § 6.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-56. Director -- Qualifications; salary; interest in banks, etc., prohibited. [References](#)

(a) The Director of the Securities Commission shall be a person of good moral character, at least 30 years of age, a resident of Alabama, a member of the Alabama bar and thoroughly familiar with corporate organization, investment banking, investment trusts, the sale of securities, and the statistical details of the manufacturing industries and commerce of this state. The Securities Commission may also require additional qualifications.

(b) The director, while serving as such, shall not directly or indirectly be financially interested in or associated with any commercial bank, savings bank, trust company, industrial loan or investment company, credit union, building and loan association, or any other person subject to the jurisdiction of the commission or the director thereof.

(c) The salary of the director shall be fixed by the commission in the salary range payable to attorneys in the merit system classification of attorney IV, as determined and set by the commission.

(Acts 1969, No. 740, p. 1315, § 7; Acts 1990, No. 90-527, p. 772, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒270; States ☒60(1).

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414; States §§ 104-108.

§ 8-6-57. Deputy director. [References](#)

(a) With the approval of the Securities Commission and subject to the provisions of the merit system law, the director thereof may designate a deputy director, who shall possess qualifications fixed by the commission with the approval of the personnel department, and who shall perform such duties as the director shall designate.

(b) In the absence of the director or his inability to act, the deputy director shall perform such duties as are required to be performed by the director.

(c) The compensation of the deputy director shall be fixed by the commission, subject to the approval of the personnel department, in the salary range payable to attorneys in the Merit System classification of Attorney IV.

(Acts 1969, No. 740, p. 1315, § 8; Acts 1979, No. 79-462, p. 827, § 7; Acts 1990, No. 90-527, p. 772, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-58. Personnel. [Historical Notes](#) [References](#)

(a) The Director of the Securities Commission shall prepare in writing a manual of necessary employee positions for the commission, including job classifications, personnel qualifications, duties, maximum and minimum salary schedules, and other personnel information for approval by the commission.

(b) Subject to the provisions of the Merit System law, the director may select, appoint, and employ such accountants, auditors, financial analysts, special agents and senior special agents, clerks, and other personnel as the director deems necessary for the proper administration of the Alabama securities laws including legal counsel to act as attorneys for the commission in actions or proceedings brought by or against the commission under or pursuant to any provision of law under the commission's jurisdiction, or in which the commission joins or intervenes as to a matter within the commission's jurisdiction, as a friend of the court or otherwise, and stenographic reporters to take and transcribe the testimony in any formal or informal hearing or investigation before the commission or before a person authorized by the commission.

(c) Special agents and senior special agents appointed pursuant to this section shall have the power to investigate matters within the commission's jurisdiction and in such capacity shall have the powers vested in peace officers and shall be considered law enforcement officers of the State of Alabama to enforce the laws of this state pertaining to the operation and administration of the commission and this chapter. Senior special agents and special agents shall exercise their power of arrest only when ordered by both the commission and a court of competent jurisdiction. The commission shall request a suspension or waiver of firearms requalification as provided in Rule 650-X-4.02 of the Alabama Peace Officers' Standards and Training Commission Code for law enforcement officers who are not required to carry or use a firearm. If a suspension or waiver cannot be obtained, senior special agents and special agents shall not carry firearms, except as required by P.O.S.T. training and continuing education. Nothing herein shall affect subpoena, visitation, examination, or other investigatory powers contained in this chapter.

(d) No person may serve as a special agent or senior special agent unless the person meets the minimum standards established for law enforcement officers by the Alabama Peace Officers' Standards and Training Commission or other standards as may be hereafter provided by law. Special agents and senior special agents appointed pursuant to subsection (b) shall meet such other additional standards as the director may adopt.

(Acts 1969, No. 740, p. 1315, § 10; Acts 1979, No. 79-462, p. 827, § 8; Act 2000-703, p. 1429, § 1.)

HISTORICAL NOTES

HISTORY

The 2000 amendment, effective August 1, 2000, in subsection (b) substituted "Merit

System" for "merit system", and substituted "special agents and senior special agents, clerks, and other personnel as the director" for "examiners, clerks, and other personnel as he"; and added subsections (c) and (d).


REFERENCES

ADMINISTRATIVE CODE

- 18 Ala. Admin. Code 650-X-12-.03, Alabama Peace Officers Standards and Training Commission; Continuing Education Requirements: Firearms Re-Qualification.
- 18 Ala. Admin. Code 650-X-12-.04, Peace Officers Standards and Training Commission; Continuing Education Requirements: Firearms Re-Qualification by Retired Certified Law Enforcement Officers.
- 18 Ala. Admin. Code 650-X-4-.02, Peace Officers Standards and Training Commission; Certification of Law Enforcement Officers: Employment Requirements.

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-59. Bonds of director and employees. [References](#)

(a) Before assuming office, the Director of the Securities Commission shall give a bond in the sum of \$50,000, payable to the State of Alabama, to be approved by the Attorney General of Alabama and filed in the office of the Secretary of State. Such bond shall be conditioned that he will faithfully execute the duties of his office.


(b) The director may by rule or order require any employee of the commission to be bonded on the same condition and in the same or such lesser amount as he determines.

(c) The expense of all such bonds shall be paid from funds available to the commission.
(Acts 1969, No. 740, p. 1315, § 9.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

§ 8-6-60. Place of office. [References](#)

The Securities Commission and the director thereof shall maintain offices in the capital city of the state, and all records of the commission shall be kept at these offices.

(Acts 1969, No. 740, p. 1315, § 11.)


REFERENCES

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-2-.02, Securities Commission; General Rules: Office Hours of the Commission.

LIBRARY REFERENCES

American Digest System:

Securities Regulation  270.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 410-411, 414.

ARTICLE 3. FIDUCIARY SECURITY TRANSFERS.

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

This article is repealed effective January 1, 1997, by Acts 1996, No. 96-542, § 1. For this article as in effect until this date, see the bound volume.

REFERENCES

CROSS REFERENCES

As to transfer of negotiable instruments by fiduciaries, see § 19-1-4.

As to conversion or exchange, etc., of securities upon merger, consolidation, etc., see § 19-3-10.

§§ 8-6-70 through 8-6-80. Repealed by Acts 1996, No. 96-742, p. 1241, § 1, effective January 1, 1997. §§ 8-6-70 through 8-6-80. Repealed by Acts 1996, No. 96-742, p. 1241, § 1, effective January 1, 1997. ARTICLE 4. OWNERSHIP BY MINORS.

REFERENCES

CROSS REFERENCES

As to infant stockholders, see § 10-6-1 et seq.

§ 8-6-90. Short title. [Historical Notes](#) [References](#)

This article may be cited as the Securities Ownership by Minors Act.
(Acts 1961, No. 1010, p. 1585, § 5.)

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Acts 1994, No. 94-245, provides in subsection (b) of Section 3 that the act does not repeal or supersede Sections 8-6-90 through 8-6-95, inclusive.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Infants ☒21-23; Securities Regulation ☒243.1, 291.1.

Corpus Juris Secundum:

C.J.S. Infants §§ 120, 123, 126, 136, 146; Securities Regulation §§ 368, 418.

§ 8-6-91. Definitions. [References](#)

In this article, unless the context otherwise requires, the following terms shall have the meanings ascribed to them by this section:

(1) Bank. A bank, trust company, national banking association, savings bank, or industrial bank.

(2) Broker. A person, including a bank, lawfully engaged in the business of effecting transactions in securities for the account of others and includes a broker lawfully engaged in buying and selling securities for his own account.

(3) Issuer. A person who places, or authorizes the placing of, his name on a security other than as a transfer agent to evidence that it represents a share, participation, or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security or who becomes responsible for or in place of any such person.

(4) Person. Such term includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity.

(5) Security. Such term includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness or certificate of interest or participation in an oil, gas, or mining title or lease or in payment out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security or any certificate, interest or participation in any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(6) Third-party. A person other than a bank, broker, transfer agent, or issuer who with respect to a security held by a minor effects a transaction otherwise than directly with the minor.

(7) Transfer agent. A person who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of securities in the issue of new securities or in the cancellation of surrendered securities.

(Acts 1961, No. 1010, p. 1585, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Infants ☒21-23; Securities Regulation ☒243.1, 291.1.

Corpus Juris Secundum:

C.J.S. Infants §§ 120, 123, 126, 136, 146; Securities Regulation §§ 368, 418.

§ 8-6-92. Liability of bank, transfer agent, etc., for treating minor as having capacity to exercise security rights; presumption that holder not minor. [References](#)

(a) A bank, broker, issuer, third-party or transfer agent incurs no liability by reason of his treating a minor as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security unless prior to acting in the transaction the bank, broker, issuer, third-party or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a minor.

(b) Except as otherwise provided in this article, such a bank, broker, issuer, third-party or transfer agent may assume without inquiry that the holder of a security is not a minor.
(Acts 1961, No. 1010, p. 1585, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Infants ☒21-23; Securities Regulation ☒243.1, 291.1.

Corpus Juris Secundum:

C.J.S. Infants §§ 120, 123, 126, 136, 146; Securities Regulation §§ 368, 418.

§ 8-6-93. Minor may not disaffirm security transaction unless prior written notice of minority given. [References](#)

A minor who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy or made an election or exercised rights relating to the security has no right thereafter, as against a bank, broker, issuer, third-party or transfer agent, to disaffirm or avoid the transaction unless, prior to acting in the transaction, the bank, broker, issuer, third-party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received written notice in the office acting in the transaction that the specific security is held by a minor.
(Acts 1961, No. 1010, p. 1585, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒293.

Corpus Juris Secundum:

§ 8-6-94. Right of minor to receive dividends, etc. [References](#)

A minor may receive in his own right dividends or other moneys in respect to any securities standing in his name on the books of a corporation, bank, or business trust, and such receipt shall constitute a valid and sufficient release and discharge of the corporation, bank, or business trust for such dividends or other moneys paid to such minor, notwithstanding that the corporation, bank, or business trust may have actual or written notice of the minority of such person.
(Acts 1961, No. 1010, p. 1585, § 4.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Infants ☒21-23; Securities Regulation ☒243.1, 291.1.

Corpus Juris Secundum:

C.J.S. Infants §§ 120, 123, 126, 136, 146; Securities Regulation §§ 368, 418.

§ 8-6-95. Certain laws not affected by article. [References](#)

Nothing in this article shall be construed to repeal or in any way affect Sections 10-6-1 through 10-6-4.
(Acts 1961, No. 1010, p. 1585, § 7.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒246.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 368, 371.

ARTICLE 5. PRE-ISSUANCE PROCEDURE FOR INDUSTRIAL REVENUE BONDS.

REFERENCES

CROSS REFERENCES

As to any activity subject to this article being exempt from the Deceptive Trade Practices Act, see § 8-19-7.

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-1-.02, Securities Commission; Organization and General Operation: Industrial Revenue Development Bond Notification Act.

21 Ala. Admin. Code 830-X-8-.01 et seq., Securities Commission; Industrial Revenue Bonds.

§ 8-6-110. Definitions. [Historical Notes](#) [References](#)

The following words and phrases, as used in this article, shall have the following meanings:

(1) Authorizing act. Any of the following statutes or acts:

a. Any of the following sections, as amended: Section 11-20-1 et seq., relating to industrial revenue bonds to be issued by counties; Section 11-54-20 et seq., relating to industrial revenue bonds to be issued by municipalities; Section 11-54-80 et seq., relating to industrial revenue bonds to be issued by municipal industrial development boards; Section 11-58-1 et seq., relating to industrial revenue bonds to be issued by municipal medical clinic boards, Section 22-21-170 et seq., relating to industrial revenue bonds to be issued by county and municipal hospital authorities; and Section 11-20-30 et seq., relating to industrial revenue bonds to be issued by county industrial development boards.

b. The following acts of the Alabama Legislature: Act No. 4, enacted at the 1956 Second Special Session of the Alabama Legislature (1956 Acts, p. 240 et seq.), relating to industrial revenue bonds to be issued by certain municipalities to finance hotel and motel projects and Act No. 337, enacted at the 1971 Third Extra Session of the Alabama Legislature (1971 Acts, p. 4625 et seq.), relating to industrial revenue bonds to be issued by certain municipalities to finance hotel and motel projects.

(2) Commission. The Alabama Securities Commission existing under Article 2 (commencing with Section 8-6-50) of Chapter 6 of Title 8.

(3) Director. The director appointed by the commission pursuant to Section 8-6-55 or, in the absence of the director or his or her inability to act, the deputy director appointed by the director as provided in Section 8-6-57.

(4) Governing body. The county commission, council, board of commissioners, board of directors, or other governing body of any issuer.

(5) Guarantor. The guarantor of the performance by the lessee of its obligations under a lease or the guarantor of any industrial revenue bonds.

(6) Improvident. With respect to any industrial revenue bonds the term means that there is a reasonable probability that the bonds will be deficient in one or more of the following respects:

a. The project may not be completed.

b. The principal of or interest on the industrial revenue bonds will not be paid when due.

c. The industrial revenue bonds may be sold or distributed by the parties or in a manner as to constitute a fraud on one or more purchasers of the bonds.

(7) Industrial revenue bonds. The bonds, warrants, notes, certificates of indebtedness, or other obligations issued by any issuer under the authority of the authorizing act to finance or refinance a project or to refund bonds, but does not include either of the following:

a. Any obligation unless the lessee is a lessee as defined in this section.

b. Any issue of bonds, warrants, notes, certificates of indebtedness, or other obligations, any of which has a stated maturity not more than 18 months from the date of its issuance and evidences a loan initially made by a bank to the issuer of the bonds, warrants, notes, certificates of indebtedness, or other obligations.

(8) Issuer. Any county, city, town, municipality, or public corporation issuing industrial revenue bonds under the authorizing act.

(9) Judicial validation. The procedure described in Section 8-6-119 by which industrial

revenue bonds may be validated and culminating in a decree of the circuit court validating the bonds.

(10) Lease. The lease, installment purchase, or other agreement by which the lessee obtains the right to use the project and agrees to make payments sufficient to pay the principal of and interest on the industrial revenue bonds issued to finance or refinance the project.

(11) Lessee. The lessee, purchaser, or user of a project under the lease. The term does not include the State of Alabama, any county, any city, town, or municipality, any public corporation or any nonprofit corporation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private share holder, member, or individual.

(12) Notification. The instrument or the procedure, or both, by which an issuer is required by this article to notify the director prior to the proposed issuance of industrial revenue bonds.

(13) Project. Any land, plant, building, facilities, equipment, or other property proposed to be acquired with the proceeds of any industrial revenue bonds to be used by a lessee under a lease.

(14) Served upon the issuer. As applied to a stop order, notice of a reference to the commission, or of a hearing before the commission, the term means that it has been deposited in the United States mail in a sealed envelope with first class, certified postage prepaid, properly addressed to the issuer at the address shown in the notification, or delivered to the person who signed the notification on behalf of the issuer.

(15) Stop order. An order issued by the director or by the commission in accordance with this article prohibiting the issuer from issuing the industrial revenue bonds described in the notification or any bonds in lieu of those bonds.

(Acts 1978, No. 586, p. 681, § 1; Acts 1992, No. 92-124, p. 224, § 3.)

HISTORICAL NOTES

HISTORY

The 1992 amendment, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992, in the introductory paragraph, deleted "unless the context clearly indicates the contrary" following "shall" and substituted "meanings" for "meaning"; in subdivision (1), substituted "Any of the following statutes or acts" for "Such term means" in the introductory language, and deleted "as amended" following "11-58-1 et seq." in paragraph a; substituted "under Article 2 (commencing with Section 8-6-50) of Chapter 6 of Title 8" for "under section 8-6-50 et seq." in subdivision (2); deleted former subdivision (3) which read: "Council. The state industrial revenue bond advisory council created and provided for in this article."; redesignated former subdivisions (4) through (16) as present subdivisions (3) through (15); in present subdivision (3), deleted "et seq." following "Section 8-6-55," inserted "or her," and substituted "Section 8-6-57" for "Said sections"; in present subdivision (6), substituted "the term" for "such term" and substituted "the bonds" for "such bonds" in the introductory paragraph, deleted "or" at the end of paragraph b, and in paragraph c, substituted "the parties" for "such parties," substituted "a manner" for "such manner," and substituted "of the bonds" for "thereof"; in present subdivision (7), in the introductory language, deleted "such" following "refund" and inserted "of the following," in paragraph a, deleted "such" preceding "obligation," deleted "hereinafter" preceding "defined," and substituted "in this section" for "or" and in paragraph b,

deleted "such" following "Any issue of," substituted "any" for "each," and substituted "the bonds" for "such bonds"; in present subdivision (9), substituted "the bonds" for "such bonds"; in present subdivision (11), substituted "The term" for "but 'lessee'"; in present subdivision (12), deleted "and--" following "instrument," added "or both" following "procedure," added "prior to" following "director of," and deleted "prior to the issuance thereof" following "revenue bonds"; in present subdivision (14), substituted "the term" for "such term" and substituted "has been" for "shall have been"; in present subdivision (15), substituted "of those bonds" for "thereof"; and made capitalization changes throughout the section.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒243.1, 270; States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 368, 410-411, 414; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-111. Legislative findings; purpose of article. [Historical Notes](#) [References](#)

(a) The legislature finds and determines that unscrupulous promoters may take advantage of the authorizing act by inducing issuers to issue industrial revenue bonds which careful investigation by the issuer or other responsible parties would reveal to be improvident. The standing of all issuers could be impaired and the purposes of the legislature in enacting the authorizing act could be thwarted by those improvident issues.

(b) The purpose of this article is to provide a procedure whereby the State of Alabama, acting through the director and the commission, may assist in developing facts to aid the issuer in the exercise of its authority under the authorizing act, and, to that end, to delay the issuance of industrial revenue bonds pending adequate investigation by the director or to prevent the issue of industrial revenue bonds found to be improvident.

(Acts 1978, No. 586, p. 681, § 2; Acts 1992, No. 92-124, p. 224, § 3.)

HISTORICAL NOTES

HISTORY

The 1992 amendment, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992, added subsection designators (a) and (b); in subsection (a), substituted "legislature" for "legislature hereby" in the first sentence, substituted "those improvident issues" for "such improvident issues" in the second sentence; and deleted "with the advice of the council" preceding "may assist in developing facts" in subsection (b).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒245, 270;

States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 370, 410-411, 414; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-112. Powers of director of Securities Commission. [References](#)

(a) The director shall have authority to:

- (1) Consider and investigate proposed issues of industrial revenue bonds;
- (2) Advise and consult with issuers with respect thereto;
- (3) Publish such notices of proposed issues of industrial revenue bonds or proposed rules and regulations as are required by this article or the rules and regulations of the commission;
- (4) Stop the issuance of industrial revenue bonds for the limited times and under the procedures provided in this article by issuing the orders and giving the notices herein required;
- (5) Cause information concerning a proposed issue of industrial revenue bonds to be presented at any meeting of the governing body at which industrial revenue bonds are to be authorized or reauthorized or any hearing upon the judicial validation of such issue; and
- (6) Perform such other functions and duties as may be required by this article or by order of the commission.

(b) The authority herein granted to the director is in addition to that granted under Section 8-6-50 et seq.

(Acts 1978, No. 586, p. 681, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒270, 274;
States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 410-411, 413-415; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-113. Powers of Securities Commission. [Historical Notes](#) [References](#)

(a) The commission may:

- (1) Stop the issuance of industrial revenue bonds under the procedures provided in this article.
- (2) Issue rules and regulations necessary or desirable to prescribe the form and content of notifications, the conduct of investigations, the issuance of stop orders, appeals by issuers, or references by the director to the commission and the conduct of hearings thereon. No rule or regulation shall be adopted by the commission until the commission shall hold a public hearing on the proposed rules and regulations, notice of which shall be given by publication one time in a daily newspaper published in the City of Montgomery and in any other manner as the commission directs.

(b) The authority granted to the commission in this section is in addition to that granted under Section 8-6-50 et seq., or any other provided by law.
(Acts 1978, No. 586, p. 681, § 4; Acts 1992, No. 92-124, p. 224, § 3.)

HISTORICAL NOTES

HISTORY

The 1992 amendment, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992, in subsection (a), substituted "may" for "shall have authority to" in the introductory language, deleted "and" at the end of subdivision (1), in subdivision (2), divided the former first sentence into the present first and second sentences by deleting "but" at the end of the present first sentence, and in the present first sentence, deleted "such" preceding "rules," and deleted "as it considers" preceding "necessary," and rewrote the present second sentence; and in subsection (b), deleted "herein" preceding "granted," inserted "in this section," and added "or any other provided by law."

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒270, 274;
States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 410-411, 413-415; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-114. Industrial revenue bond advisory council. Repealed by Acts 1992, No. 92-124, p. 224, § 6, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992. § 8-6-115. Notifications of intent to issue bonds.

Historical Notes References

On and after May 27, 1978, any issuer proposing to issue any industrial revenue bonds under authority of the authorizing act shall, at least 20 days prior to the date of delivery of the industrial revenue bonds, deliver to the director a notification in writing of its intention to issue the bonds. The director may for good cause shown, waive, shorten, or, with the consent of the issuer, extend the 20-day requirement. The notifications shall contain the name and address of the issuer, the lessee, the guarantor, if any, the trustee, the underwriter, purchaser, fiscal agent, or agents, legal counsel for each of the above named parties and bond counsel, the estimated face amount of the bond issue, the estimated capital budget for the project to the extent that the information is available to the issuer when it files the notification, and any other information prescribed by the rules and regulations issued by the commission to advise the director and the commission of the nature of the proposed transaction. Each notification shall be accompanied by a filing fee equal to one twentieth of one percent of the principal amount of industrial revenue bonds described in the notification. No filing fee shall be less than \$25 nor greater than \$1,000. All fees shall be

deposited in a special account in the State Treasury to be withdrawn by the director for the use of the commission in the administration of this article. All notifications shall be available for public inspection during the normal business hours of the director.

(Acts 1978, No. 586, p. 681, § 6; Acts 1992, No. 92-124, p. 224, § 3.)

HISTORICAL NOTES

HISTORY

The 1992 amendment, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992, in the first sentence, substituted "On" for "From," substituted "the industrial revenue bonds" for "such industrial revenue bonds," and substituted "the bonds" for "such industrial revenue bonds"; in the second sentence, substituted "The director may for good cause shown" for "provided, that for good cause shown, the director may"; in the third sentence, deleted "and/or" preceding "fiscal agent," deleted "and" following "bond issue," substituted "to the extent that the" for "insofar as such," substituted "any other" for "such other," deleted "as may be reasonably" preceding "prescribed," deleted "which may be" preceding "issued," inserted "and" following "director," and deleted "and the council" following "commission"; in the fourth sentence, deleted "provided, that no" following "notification"; in the fifth sentence, added "No" preceding "filing fee"; and in the sixth sentence, deleted "such" preceding "fees", and made changes in capitalization.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒270, 272; States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 374, 410-411, 414; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-116. Action by director upon receipt of notification; stop orders. [Historical Notes](#) [References](#)

Upon receipt of a notification, the director shall cause a preliminary investigation or inquiry to be made into the proposed issue to determine whether there exist circumstances which, in his or her opinion, indicate that the proposed issue of industrial revenue bonds may be an improvident issue. If he or she finds that the proposed issue may be improvident, he or she shall advise the issuer of the findings and shall issue a stop order or stop orders requiring that for a period of time not exceeding in the aggregate 90 days after the filing of the notification, the issuer shall not issue the industrial revenue bonds proposed in the notification or any industrial revenue bonds in lieu of the bonds proposed. When a stop order has been served upon the issuer, it shall be fully effective (a) unless lifted by the director or the commission for good cause shown, or (b) unless the proposed industrial revenue bonds described in the notification have been reauthorized by the governing body of the issuer at a meeting at which the governing body has considered any comments or objections presented by the director or his or her representative.

Written notice of the meeting shall be given to the director. The notice shall also be published in a newspaper published or circulated in the county where the proposed issuer is located. (Acts 1978, No. 586, p. 681, § 7; Acts 1992, No. 92-124, p. 224, § 3.)

HISTORICAL NOTES

HISTORY

The 1992 amendment, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992, rewrote this section.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒270, 274; States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 410-411, 413-415; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-117. Appeals or references to Securities Commission. [References](#)

When a stop order has been issued by the director, the issuer shall have the right to appeal the matter to the commission by notice in writing of such appeal delivered to the director. The director shall have the right to refer to the commission the matter of any issue of industrial revenue bonds proposed in a notification as to which a stop order is then in effect or which have been reauthorized by the governing body of the issuer pursuant to Section 8-6-116, and to request that the commission issue a permanent stop order. Notice of such reference and request shall be given in writing and served upon the issuer. The director shall mail to each member of the council a copy of each notice required by this section as soon as it is delivered to him or prepared for service upon the issuer.

(Acts 1978, No. 586, p. 681, § 8.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒270; States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 410-411, 414; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-118. Proceedings before Securities Commission. [Historical Notes](#) [References](#)

When the matter of any proposed industrial revenue bond issue has been appealed by the issuer to the commission or referred to the commission by the director with the request that the

commission issue a permanent stop order, the director shall convene the commission. The commission shall conduct a hearing on the matter within 14 days after receipt by the director of the notice of appeal or service upon the issuer of the referral. At the request of the issuer, the date of the hearing may be postponed. Notice of the time, place, and purpose of the hearing shall be served upon the issuer at least three days before the date of the hearing. The issuer and other interested parties shall have the right to appear and be heard in person or by counsel. The commission shall render a decision within three days after the hearing. Pending the determination by the commission of any appeal or referral, the stop order previously issued by the director shall remain in effect until the commission renders a decision, or three days after the hearing, whichever is earlier. If, upon a hearing of the matter, the commission concludes that the proposed issue of industrial revenue bonds is improvident, the stop order previously issued by the director shall be made permanent and neither the proposed industrial revenue bonds nor any industrial revenue bonds in lieu of the bonds shall be issued until approved by judicial validation in proceedings instituted by the proposed issuer after the issuance of the stop order. If the commission concludes that the issue is not improvident, the commission shall lift the stop order and the issuer may proceed to issue the proposed industrial revenue bonds. (Acts 1978, No. 586, p. 681, § 9; Acts 1992, No. 92-124, p. 224, § 3.)

HISTORICAL NOTES

HISTORY

The 1992 amendment, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992, rewrote this section.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒270; States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 410-411, 414; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-119. Judicial validation proceedings. [Historical Notes](#) [References](#)

Any judicial validation proceeding instituted under this article shall conform to and be conducted in accordance with either Section 6-6-750 et seq. or Section 11-81-220 et seq., whichever is applicable to the issuer. The petition shall allege that the issue of industrial revenue bonds proposed by the issuer is not improvident, and the director shall be served with notice of the proceeding in the same manner and for the same time as the district attorney, and may attend the hearing before the circuit court having jurisdiction of the matter in person or by attorney, present evidence, and be heard by the court. The court shall not validate unless, pursuant to evidence presented at the hearing, the court finds and determines that the issue is not improvident. No judicial validation proceedings shall be instituted under this article until the commission enters a stop order or until the expiration of 15 days after the proposed industrial revenue bond issue is appealed by the issuer or referred to the commission by the director

without any stop order having been issued.
(Acts 1978, No. 586, p. 681, § 10; Acts 1992, No. 92-124, p. 224, § 3.)

HISTORICAL NOTES

HISTORY

The 1992 amendment, which became law without the Governor's signature under § 125 of the Constitution on March 20, 1992, rewrote this section.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒270, 275;
States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 410-411, 414, 417; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-120. Certificate of notification; representation that industrial revenue bonds have been approved prohibited. [References](#)

In the event that (1) 20 days shall have expired after the filing by an issuer of the notification required by Section 8-6-115 describing proposed industrial revenue bonds to be issued by it, or the director shall have waived, shortened or, with the consent of the issuer, extended such waiting period and (2) no stop order shall then be effective as to the proposed industrial revenue bonds, the director shall provide such issuer with a certificate substantially as follows:

CERTIFICATE OF NOTIFICATION

The of (the issuer) has filed in my office a notification under Act No. 586 of the 1978 Regular Session of the Alabama Legislature stating its intention to issue \$ of its Industrial Revenue Bonds and no stop order is effective as to the issue of such bonds. This certificate is not an approval of said bonds, and it is unlawful for any person to represent that such bonds have been approved by the director, the commission or any other agency of the state.

This day of, 19

Director

It shall be unlawful for any issuer to issue any industrial revenue bonds under the authority of the authorizing act unless the foregoing certificate with respect to such industrial revenue bonds shall have been issued by the director or unless the proposed industrial revenue bonds shall have been reauthorized by the governing body of the issuer pursuant to Section 8-6-116 or shall have been judicially validated pursuant to Sections 8-6-118 and 8-6-119. When a certificate of notification shall have been issued by the director, no stop order thereafter issued either by the

director or the commission with respect to the industrial revenue bonds described in such certificate shall be effective unless, prior to the issuance of the industrial revenue bonds described in such certificate, such stop order shall have been served personally upon the person who signed the notification in behalf of the issuer and upon each bond counsel named in the notification with respect to the industrial revenue bonds described in such certificate. When the industrial revenue bonds described in a certificate of notification shall have been issued, such certificate shall be conclusive evidence of formal compliance by the issuer with this article, and the failure of the issuer to comply with any requirement of this article in issuing the industrial revenue bonds described in such certificate shall not affect the validity of such industrial revenue bonds. In the event that any industrial revenue bonds shall be issued without a certificate of notification having been issued with respect thereto, the holder of any such bonds shall, in addition to any other right he may have by statute or law, have the right of rescission as to such bonds; provided, that such right shall be exercised within 12 months of the date on which such bonds shall have been delivered by the issuer and paid for; and provided further, that any right of recovery against the issuer shall be limited to the then unexpended proceeds of such bonds. In the event that the director shall refuse to issue a certificate of notification to any issuer entitled thereto, an appeal shall lie to the commission or the circuit court of Montgomery County, which shall have jurisdiction to require the director forthwith to issue any certificate wrongfully withheld.

It shall be unlawful for any issuer or any person, firm, or corporation to represent that an issue of industrial revenue bonds has been approved by the director or the commission or any agency of the state, whether the certificate herein provided for shall have been issued or not. (Acts 1978, No. 586, p. 681, § 11.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Counties ☒177, 180; Municipal Corporations ☒917; Securities Regulation ☒270; States ☒84; Towns ☒52(4).

Corpus Juris Secundum:

C.J.S. Counties § 221; Municipal Corporations §§ 1658-1660; Securities Regulation §§ 410-411, 414; States §§ 141-143, 165, 202; Towns §§ 220-221, 223.

§ 8-6-121. Criminal penalties. [References](#)

Any lessee, any guarantor, or any officer of any issuer, lessee, or guarantor or any other person, firm, or corporation who:

- (1) Willfully violates this article;
- (2) Willfully participates in the issuance of any industrial revenue bonds without having obtained the certificate of notification required by Section 8-6-120;
- (3) Willfully participates in the issuance of any industrial revenue bonds in violation of this article;
- (4) Willfully violates any stop order lawfully issued by the director or the commission under this article and in effect; or
- (5) Makes or files or causes to be made or filed, with the director or the commission

under this article, any statement, document, or other paper which is false in any material respect or matter;

shall be guilty of a felony and upon conviction shall be fined not more than \$10,000 or shall be imprisoned for a period not exceeding 10 years or both so fined and so imprisoned, as the trial court shall determine. No prosecution under this section shall be commenced more than five years after the occurrence of the alleged violation.

(Acts 1978, No. 586, p. 681, § 12.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 321-323, 325.1-329.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 445-446, 448-452.

§ 8-6-122. Article remedial; certain statutes not repealed. [References](#)

This article is remedial in nature and shall not be construed so as to repeal any provision of Section 8-6-1 et seq. or Section 8-6-50 et seq.

(Acts 1978, No. 586, p. 681, § 13.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Securities Regulation ☒ 246.

Corpus Juris Secundum:

C.J.S. Securities Regulation §§ 368, 371.

ill Substitutes.

Code of Alabama 1975, Sections 8-7-1 through 8-7-115

CHAPTER 7. SALE OF CHECKS.

REFERENCES

CROSS REFERENCES

As to any activity subject to this chapter being exempt from the Deceptive Trade Practices Act, see § 8-19-7.

ADMINISTRATIVE CODE

21 Ala. Admin. Code 830-X-1-.03, Securities Commission; Organization and General Operation: Sale of Checks Act.

21 Ala. Admin. Code 830-X-7-.01, Securities Commission; Sale of Checks Act.

§ 8-7-1. Short title. [References](#)

This chapter shall be known and may be cited as the Sale of Checks Act.
(Acts 1961, Ex. Sess., No. 177, p. 2142, § 1.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses 8(.5).

Corpus Juris Secundum:

C.J.S. Licenses § 13.

RESEARCH REFERENCES

Treatises and Practice Aids

Alabama Personal Injury and Torts § 12:6, Deceptive Trade or Business Practices.

Alabama Personal Injury and Torts § 10:15, Deceptive Trade or Business Practices.

§ 8-7-2. Definitions. [References](#)

For purposes of this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates a different meaning:

(1) Person. Any individual, partnership, association, joint stock association, trust, or corporation.

(2) Licensee. Any person duly licensed by the commission pursuant to this chapter.

(3) Check. Any check, draft, money order, or other instrument for the transmission or payment of money.

(4) Commission. The Alabama Securities Commission.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒ 8(.5).

Corpus Juris Secundum:

C.J.S. Licenses § 13.

§ 8-7-3. License -- Required. [References](#)

No person, as a service or for a fee or other consideration, shall engage in the business of selling, issuing, or otherwise dispensing checks or receiving money as agent for obligors for the purpose of paying such obligors' bills, invoices, or accounts without first obtaining a license from the commission pursuant to the provisions of this chapter.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 3.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒ 11(1), 16(.1).

Corpus Juris Secundum:

C.J.S. Architects §§ 2-3, 68; Licenses § 34.

§ 8-7-4. License -- Exemptions. [References](#)

(a) Nothing in this chapter shall apply to the sale or issuance or dispensing of checks or the receiving of money as agent for obligors for the purpose of paying such obligors' bills, invoices, or accounts by:

(1) Banks, trust companies, and savings and loan associations organized under the laws of this state or of the United States;

(2) The government of the United States or any department or agency thereof; or

(3) The state of Alabama or any municipal corporation, county, or other political subdivision of this state.

(b) Neither shall this chapter apply to the receipt of money by an incorporated telegraph company or any agent thereof for immediate transmission by telegraph.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 4.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒ 19(.5).

Corpus Juris Secundum:

C.J.S. Licenses §§ 35-36.

§ 8-7-5. License -- Application. [References](#)


Each application for a license to engage in the business of selling or issuing or dispensing checks or receiving money as agent for obligors for the purpose of paying such obligors' bills, invoices, or accounts shall be made in writing and under oath to the commission in such form as it may prescribe. The application shall state the full name and business address of:

- (1) The proprietor, if the applicant is an individual;
 - (2) Every member, if the applicant is a partnership or association, except that, if the applicant is a joint stock association having 50 or more members, the name and business address need be given only of the association and each officer and director thereof; or
 - (3) The corporation and each officer and director thereof, if the applicant is a corporation.
- (Acts 1961, Ex. Sess., No. 177, p. 2142, § 5.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  22.

Corpus Juris Secundum:

C.J.S. Architects § 9; Licenses § 43.

§ 8-7-6. License -- Investigation fee; license fee. [References](#)

Each application for a license shall be accompanied by an investigation fee of \$250 and a license fee in the amount required by Section 8-7-9. The license fee shall be refunded if the application is denied. No investigation fee shall be refunded. All fees collected by the commission under the provisions of this chapter shall be deposited with the state treasurer and shall be set aside by him in a separate fund earmarked for the use of the commission in the administration and enforcement of this chapter.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 6; Acts 1991, No. 91-320, p. 584, § 2.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  28-35.

Corpus Juris Secundum:

C.J.S. Licenses §§ 64-73; Trading Stamps and Coupons §§ 10-11.

§ 8-7-7. License -- Certified financial statement; surety bond or deposit of securities; list of offices, etc. [References](#)

Each application for a license shall be accompanied by:

- (1) Certified financial statements reasonably satisfactory to the commission showing that the applicant's net worth exceeds \$5,000;

(2) A corporate surety bond in the principal sum of \$10,000 for the principal office plus an additional principal sum of \$5,000 for each additional location, office, or agency of such applicant in this state at which the business is to be conducted, but in no event shall the bond be required to be in a principal sum in excess of \$50,000. If the bond accompanying the application is in a principal sum less than \$50,000, the application shall also be accompanied by a list of the locations, offices, and agencies at which the business is to be conducted. The bond shall be in a form satisfactory to the commission and shall be issued by a bonding company or insurance company authorized to do business in this state to secure the faithful performance of the obligations of the applicant and the agents and subagents of the applicant with respect to the receipt, transmission, and payment of money in connection with the sale or issuance or dispensing of checks or the payment of obligors' bills, invoices, or accounts; or

(3) In lieu of such corporate surety bond, the applicant may deposit with the state treasurer bonds or other obligations of this state or of any municipal corporation, county, or other political subdivision or agency of this state in principal amount at least equal to that of the corporate surety bond otherwise required. Such bonds or obligations shall be deposited with the state treasurer to secure the same obligations as would a corporate surety bond, but the depositor shall be entitled to receive all interest and dividends thereon and shall have the right to substitute other bonds or obligations for those deposited with the approval of the commission and shall be required so to do on order of the commission made for good cause shown.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 7.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  22, 26.

Corpus Juris Secundum:

C.J.S. Architects § 9; Licenses §§ 42-43.

§ 8-7-8. License -- Issuance. [References](#)

Upon the filing of the application, the payment of the investigation fee and license fee, and the approval by the commission of the bond or securities delivered pursuant to Section 8-7-7, the commission shall investigate the financial responsibility, financial and business experience, character and general fitness of the applicant and, if it deems it advisable, of its officers and directors, and, if it finds these factors and qualities meet the requirements of this chapter and are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently and in a manner commanding the confidence and trust of the community, it shall issue to the applicant a license to engage in the business of selling and issuing and dispensing checks and receiving money as agent of obligors for the purpose of paying such obligors' bills, invoices, or accounts subject to the provisions of this chapter.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 8.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  21, 22.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects §§ 4, 9; Licenses §§ 37-38, 43.

§ 8-7-9. License fees. [References](#)

Each licensee shall pay to the commission with his application, and annually thereafter on or before April 1 of each year, a license fee of \$250 for the principal office and an additional \$5 for each additional location, office, or agency at which the business is to be conducted; provided, however, that no such additional fee shall be required for any agent or subagent of a licensee if the agent or subagent is exempted by subdivision (a) (1) of Section 8-7-4; and provided further, that no person shall be required to pay an amount in excess of \$500 per year for a license under this section.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 9.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  28-35.

Corpus Juris Secundum:

C.J.S. Licenses §§ 64-73; Trading Stamps and Coupons §§ 10-11.

§ 8-7-10. Employees, agents or representatives of licensees. [References](#)

Each licensee may conduct business at one or more locations within this state and through or by means of such employees, agents, subagents, or representatives as such licensee may from time to time designate and appoint. No license under this chapter shall be required of any such employee, agent, subagent, or representative with respect to transactions in which he is acting for or in behalf of a licensee under this chapter.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 10.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  25, 36.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Licenses §§ 41, 45-48.

§ 8-7-11. Annual and supplemental listings of offices, etc.; adjustment of surety bond or

deposit. [References](#)

(a) Each licensee shall file with the commission annually on or before April 1 of each year a statement listing the locations, offices, and agencies authorized by the licensee to act for or on behalf of the licensee in selling or issuing or dispensing checks or receiving money as the agent of obligors for the purpose of paying such obligors' bills, invoices, or accounts.

(b) A supplemental statement setting forth any changes in the list of locations, offices, and agencies shall be filed with the commission on or before the first day of July, October, and January of each year, and the principal sum of the corporate surety bond or deposit required under Section 8-7-7 shall be adjusted, if appropriate, to reflect any increase or decrease in the number of locations, offices, and agencies. An additional \$5 for each new location, office, or agency shall be paid to the commission, unless the maximum license fee provided by Section 8-7-9 has already been paid. Such annual and supplemental statements shall not be required of any licensee who pays the maximum license fee provided by Section 8-7-9 and who continues to maintain a corporate surety bond or deposit in the principal sum of \$50,000.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 11.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses  25, 36.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Licenses §§ 41, 45-48.

§ 8-7-12. Procedure for denial or revocation of license; judicial review. [References](#)

(a) No license shall be denied or revoked except on 10 days' notice to the applicant or licensee. Upon receipt of such notice, the applicant or licensee may, within five days of such receipt, make written demand for a hearing. Pending final determination of the matter by the commission or by the courts, any revocation order shall be suspended, provided that the licensee posts a bond in an amount deemed adequate by the commission but not to exceed \$50,000. Such bond shall secure the same obligations as does the corporate surety bond or deposit required by Section 8-7-7, but shall be in addition to the bond or deposit required thereby. Upon receipt of such written demand, the commission shall thereafter, with reasonable promptness, hear and determine the matter as provided by law.

(b) If the applicant or licensee deems himself aggrieved by such determination or order of the commission, he may, within 15 days after such determination or order, have such determination or order reviewed by appeal to the circuit court of Montgomery County, Alabama, by filing a petition setting out the specific order or action or part thereof whereby such person deems himself aggrieved. All such petitions shall be given preferred settings and shall be heard by the court as speedily as possible. Such an appeal shall be perfected upon the posting of a bond for the costs of the appeal, accompanied by the said petition. Any party of said appeal may appeal to the Supreme Court of Alabama from the judgment or order of the said circuit court in the manner provided in the Alabama Rules of Appellate Procedure.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 12.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒ 20, 22, 38, 39.3.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects §§ 4, 7, 9-10; Licenses §§ 39-41, 43, 48, 50-63.

§ 8-7-13. Grounds for revocation of licenses. [References](#)

The commission may at any time revoke a license, on any ground on which it might refuse to grant a license, for failure to pay an annual fee or for violation of any provision of this chapter, subject to the provisions of this chapter.

(Acts 1960, Ex. Sess., No. 177, p. 2142, § 13.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒ 38.

Corpus Juris Secundum:

C.J.S. Agriculture § 4.5; Architects § 10; Licenses §§ 48, 50-63.

§ 8-7-14. Increase of surety bond or deposit. [References](#)

Any provision of this chapter to the contrary notwithstanding, the commission may at any time, if in its opinion the protection of the public so requires, increase the principal sum of the bond or deposit required of any applicant or licensee by Section 8-7-7, but in no case shall the principal sum of the required bond or deposit exceed \$50,000, except as provided by Section 8-7-12.

(Acts 1961, Ex. Sess., No. 177, p. 2142, § 14.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses ☒ 26.

Corpus Juris Secundum:

C.J.S. Licenses § 42.

§ 8-7-15. Penalties for violation of provisions of chapter. [References](#)


If any person to whom or which this chapter applies or any agent, subagent, or representative of such person violates any of the provisions of this chapter or attempts to transact the business of selling or issuing or dispensing checks or the business of receiving money as agent of obligors for the purpose of paying such obligors' bills, invoices, or accounts as a service or for a fee or other consideration without having first obtained a license from the commission pursuant to the

provisions of this chapter, such person and each such agent, subagent, or representative shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$500, and may also be confined in the county jail or sentenced to hard labor for the county for not more than 12 months. Each violation shall constitute a separate offense. (Acts 1961, Ex. Sess., No. 177, p. 2142, § 15.)

REFERENCES

LIBRARY REFERENCES

American Digest System:

Licenses 41, 42(.5)-42(7).

Corpus Juris Secundum:

C.J.S. Licenses §§ 78-81, 84-87; Trading Stamps and Coupons § 6.

HB797 (2007 Legislation)

1 HB797
2 91581-1
3 By Representative Knight
4 RFD: Judiciary
5 First Read: 01-MAY-07

1 91581-1:n:04/26/2007:KMS*/th LRS2007-2438

2

3

4

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6

7

8 SYNOPSIS: This bill would increase the licensing and
9 registration fees for dealers, agents, investment
10 advisers, representatives, and securities under the
11 purview of the Alabama Securities Commission.

12 This bill would also increase the criminal
13 and civil penalties for violation of antifraud
14 provisions.

15

16 A BILL

17 TO BE ENTITLED

18 AN ACT

19

20 To amend Sections 8-6-3, 8-6-5, 8-6-8, 8-6-10,
21 8-6-11, 8-6-18, and 8-6-19, Code of Alabama 1975, relating to
22 the Alabama Securities Commission, to increase the licensing
23 and registration fees for dealers, agents, investment
24 advisers, representatives, and securities; to increase the
25 criminal penalty for violation of the antifraud provisions
26 from a Class C felony to a Class B felony; and to increase the
27 maximum civil liability from \$50,000 to \$1,000,000.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 8-6-3, 8-6-5, 8-6-8, 8-6-10,
3 8-6-11, 8-6-18, and 8-16-19 of the Code of Alabama 1975, are
4 amended to read as follows:

5 "§8-6-3.

6 "(a) It is unlawful for any person to transact
7 business in this state as a dealer or agent for securities
8 unless he or she is registered under this article. It is
9 unlawful for any dealer or issuer to employ an agent unless
10 the agent is registered.

11 "(b) It is unlawful for any person to transact
12 business in this state as an investment adviser or as an
13 investment adviser representative unless:

14 "(1) He or she is so registered under this article;

15 "(2) His or her only clients in this state are
16 investment companies as defined in the Investment Company Act
17 of 1940, other investment advisers, broker-dealers, banks,
18 trust companies, savings and loan associations, insurance
19 companies, employee benefit plans with assets of not less than
20 \$1,000,000, and governmental agencies or instrumentalities,
21 whether acting for themselves or as trustees with investment
22 control, or other institutional investors as are designated by
23 rule or order of the commission; or

24 "(3) He or she has no place of business in this
25 state and during any period of 12 consecutive months does not
26 direct business communications in this state in any manner to
27 more than five clients, other than those specified in

1 subdivision (2), whether or not he, she, or any of the persons
2 to whom the communications are directed is then present in
3 this state.

4 "(c) It is unlawful for any investment adviser
5 required to be registered to employ an investment adviser
6 representative unless the investment adviser representative is
7 registered under this article. The registration of an
8 investment adviser representative is not effective during any
9 period when he or she is not employed by an investment adviser
10 registered under this article. When an investment adviser
11 representative begins or terminates employment with an
12 investment adviser, the investment adviser shall promptly
13 notify the commission.

14 "(d) A dealer, agent, investment adviser, or
15 investment adviser representative may apply for registration
16 by filing with the securities commission, or its designee, an
17 application, together with a consent to service of process
18 pursuant to Section 8-6-12 and payment of the fee prescribed
19 in subsection (h) of this section. The application shall
20 contain whatever information the commission requires
21 concerning such matters as:

22 "(1) The applicant's form and place of organization;

23 "(2) The applicant's proposed method of doing
24 business;

25 "(3) The qualifications and business history of the
26 applicant and, in the case of a dealer or investment adviser,
27 any partner, officer, or director, any person occupying a

1 similar status or performing similar functions, or any person
2 directly or indirectly controlling the dealer or investment
3 adviser;

4 "(4) Any injunction or administrative order or
5 conviction of a misdemeanor involving moral turpitude, a
6 security or any aspect of the securities business, any
7 conviction of a felony;

8 "(5) The applicant's financial condition and
9 history; and

10 "(6) Any information to be furnished or disseminated
11 to any client or prospective client, if the applicant is an
12 investment adviser.

13 "(e) The commission shall by rule or order require
14 all or any class of applicants to post surety bonds, or cash,
15 in an amount not less than \$50,000, and shall determine their
16 conditions.

17 "(f) If no order to the contrary is in effect and no
18 proceeding is pending under subsection (j) of this section,
19 registration becomes effective at 5:00 P.M. on the sixtieth
20 day after an application is filed. The Securities Commission
21 may specify an earlier effective date, and it may by order
22 defer the effective date until 5:00 P.M. of the sixtieth day
23 after the filing of any amendment. The commission shall
24 require as conditions of registration that:

25 "(1) All or any class of applicants and, in the case
26 of a corporation or partnership, the officers or partners,
27 pass an examination, either written or oral, the form,

1 content, and conduct of which the commission shall prescribe
2 by rule or order.

3 "(2) A dealer shall have and maintain a minimum net
4 capital as the commission shall prescribe by rule or order.
5 The commission may by rule establish minimum financial
6 requirements for investment advisers, which may include
7 different requirements for those investment advisers who
8 maintain custody of clients' funds or securities or who have
9 discretionary authority over same and those investment
10 advisers who do not.

11 "(3) Every registration expires December 31 unless
12 renewed as hereinafter provided.

13 "(g) Registration of a dealer, agent, investment
14 adviser, or investment adviser representative may be renewed
15 by filing with the Securities Commission, or its designee,
16 prior to the expiration thereof, a renewal application. The
17 renewal application shall contain such information as the
18 commission may require to indicate any material change in the
19 information contained in the original application or any
20 renewal application for registration filed with the
21 commission, or its designee, by the applicant, payment of the
22 prescribed fee and a bond as provided in subsection (e) of
23 this section, if the financial condition of the registrant
24 requires such bond. In order to continue the effectiveness of
25 registration and to entitle the dealer or adviser to a renewal
26 thereof, such registrant ~~must~~ shall file a financial statement
27 prepared in accordance with generally accepted accounting

1 principles and certified by an independent certified public
2 accountant showing the financial condition of such registrant
3 at the close of its fiscal period. This statement ~~must~~ shall
4 be filed with the commission, or its designee, within 60 days
5 after the close of the registrant's fiscal period unless an
6 extension of time is granted by the commission. The commission
7 shall accept for filing a financial statement in the form
8 required to be filed with the United States securities and
9 exchange commission from those registrants who are registered
10 therewith.

11 "(h) The fee for initial or renewal registration
12 shall be ~~\$200~~ two hundred fifty dollars (\$250) for a dealer,
13 ~~\$50~~ sixty dollars (\$60) for an agent, ~~\$200~~ two hundred fifty
14 dollars (\$250) for an investment adviser and ~~\$50~~ sixty dollars
15 (\$60) for an investment adviser representative. The fee for
16 initial or renewal registration of an investment adviser or
17 investment adviser representative shall be deposited in the
18 Alabama Securities Commission Fund in the State Treasury to be
19 drawn upon by the commission for its use in administration of
20 this article. When an application is denied or withdrawn, the
21 Securities Commission shall retain the fee.

22 "(i) Every registered dealer and investment adviser
23 shall make and keep such accounts and other records as the
24 Securities Commission by rule prescribes. All records so
25 required shall be preserved for five years unless the
26 commission prescribes otherwise for particular types of
27 records. The commission may require that certain information

1 be furnished or disseminated by a registrant as necessary or
2 appropriate in the public interest or for the protection of
3 investors and advisory clients. To the extent determined by
4 the commission in its discretion, information furnished to
5 clients or prospective clients of an investment adviser
6 pursuant to the Investment Advisers Act of 1940 and the rules
7 thereunder may be used in whole or partial satisfaction of
8 this requirement. All the records of any registrant are
9 subject at any time or from time to time to such reasonable
10 periodic, special, or other examinations by representatives of
11 the commission, within or without this state, as the
12 commission deems necessary or appropriate in the public
13 interest or for the protection of investors.

14 "(j) The Securities Commission may by order deny,
15 suspend, or revoke any registration, or censor or bar any
16 applicant or registrant or any officer, director, partner, or
17 person occupying a similar status or performing similar
18 functions for a registrant, from employment with a dealer or
19 investment adviser, or restrict or limit a registrant as to
20 any function or activity of the business for which
21 registration is required in this state if the commission finds
22 that the order is in the public interest and that the
23 applicant or registrant or, in the case of a dealer or
24 investment adviser, any partner, officer or director, any
25 person occupying a similar status or performing similar
26 functions, or any person directly or indirectly controlling
27 the dealer or investment adviser:

1 "(1) Has filed an application for registration under
2 this section which, as of its effective date or as of any date
3 after filing in the case of an order denying effectiveness,
4 was incomplete in any material respect or contained any
5 statement which was, in the light of the circumstance under
6 which it was made, false or misleading with respect to any
7 material fact;

8 "(2) Has willfully violated or willfully failed to
9 comply with any provisions of this article, or a predecessor
10 act, or any rule or order under this article, or a predecessor
11 act;

12 "(3) Has been convicted of any misdemeanor involving
13 moral turpitude, a security, or any aspect of the securities
14 business or any felony;

15 "(4) Is permanently or temporarily enjoined by any
16 court of competent jurisdiction from engaging in or continuing
17 any conduct or practice involving any aspect of the securities
18 business;

19 "(5) Is the subject of an order of the commission
20 denying, suspending, or revoking registration as a dealer,
21 agent, investment adviser, or investment adviser
22 representative;

23 "(6) Is the subject of an order, adjudication, or
24 determination entered within the past 10 years by a securities
25 or commodities agency or a national securities exchange or
26 association registered under the Securities Exchange Act of
27 1934, or an administrator of another state, or a court of

1 competent jurisdiction that the person has violated the
2 Securities Act of 1933, the Securities Exchange Act of 1934,
3 the Investment Advisers Act of 1940, the Investment Company
4 Act of 1940, the Commodity Exchange Act, or the federal mail
5 and wire fraud statutes, or the securities, investment
6 adviser, or commodities law of any other state; but the
7 commission may not enter any order under this subsection on
8 the basis of an order unless that order was based on facts
9 which would currently constitute a ground for an order under
10 this section;

11 "(7) Has engaged in dishonest or unethical practices
12 in the securities business;

13 "(8) Is insolvent, either in the sense that his or
14 her liabilities exceed his or her assets or in the sense that
15 he or she cannot meet his or her obligations as they mature,
16 but the commission may not enter an order against a dealer or
17 investment adviser under this subsection without a finding of
18 insolvency as to the dealer or investment adviser;

19 "(9) Has not complied with a condition imposed by
20 the commission under subsection (f) of this section, or is not
21 qualified on the basis of such factors as training,
22 experience, or knowledge of the securities business;

23 "(10) Has failed reasonably to supervise his or her
24 agents or employees if he or she is a dealer, or his or her
25 investment adviser representatives or employees if he or she
26 is an investment adviser to assure their compliance with this
27 article; or

1 "(11) Has failed to pay the proper filing fee, but
2 the commission may enter only a denial order under this
3 subsection, and it shall vacate any such order when the
4 deficiency has been corrected.

5 "The commission may by order summarily postpone or
6 suspend registration pending final determination of any
7 proceeding under this subsection.

8 "(k) If the Securities Commission finds that any
9 registrant or applicant for registration is no longer in
10 existence, has ceased to do business as a dealer, agent,
11 investment adviser, or investment adviser representative, is
12 subject to an adjudication of mental incompetence or to the
13 control of a committee, conservator, or guardian, or cannot be
14 located after reasonable search, the commission may by order
15 cancel the registration or application.

16 "§8-6-5.

17 "~~(a) The following securities may be registered by~~
18 ~~notification, whether or not they are also eligible for~~
19 ~~registration by coordination under Section 8-6-6.~~

20 "~~(1) Any security whose issuer and any predecessors~~
21 ~~have been in continuous operation for at least five years if:~~

22 "~~a. There has been no default during the current~~
23 ~~fiscal year or within the three preceding fiscal years in the~~
24 ~~payment of principal, interest, or dividends on any security~~
25 ~~of the issuer, or any predecessor, with a fixed maturity or a~~
26 ~~fixed interest or dividend provision; and~~

1 ~~"b. The issuer and any predecessors during the past~~
2 ~~three fiscal years have had average net earnings determined in~~
3 ~~accordance with generally accepted accounting practices which~~
4 ~~are applicable to all securities without a fixed maturity or a~~
5 ~~fixed interest or dividend provision and which:~~

6 ~~"1. Equal at least five percent of the amount of~~
7 ~~securities without a fixed maturity or a fixed interest or~~
8 ~~dividend provision outstanding at the date the registration~~
9 ~~statement is filed, (as measured by the maximum offering price~~
10 ~~or the market price on a day selected by the registrant within~~
11 ~~30 days before the date of filing the registration statement,~~
12 ~~whichever is higher, or, if there is neither a readily~~
13 ~~determinable market price nor an offering price, book value on~~
14 ~~a day selected by the registrant within 90 days of the date of~~
15 ~~filing the registration statement); or~~

16 ~~"2. If the issuer and any predecessors have not had~~
17 ~~any securities without a fixed maturity or a fixed interest or~~
18 ~~dividend provision outstanding for three full fiscal years,~~
19 ~~equal at least five percent of the amount (as measured by the~~
20 ~~maximum public offering price) of such securities which will~~
21 ~~be outstanding if all the securities being offered or proposed~~
22 ~~to be offered, whether or not they are proposed to be~~
23 ~~registered or offered in this state, are issued.~~

24 ~~"(2) Any security, other than a certificate of~~
25 ~~interest or participation in an oil, gas, or mining title or~~
26 ~~lease or in payments out of production under such a title or~~
27 ~~lease, registered for nonissuer distribution if any security~~

1 ~~of the same class has ever been registered under this article,~~
2 ~~or a predecessor act, or the security being registered was~~
3 ~~originally issued pursuant to an exemption under this article,~~
4 ~~or a predecessor act.~~

5 ~~"(3) Any national market system security under~~
6 ~~Section 11A of the Securities Exchange Act of 1934, including~~
7 ~~any other security of the same issuer which is of senior or~~
8 ~~substantially equal rank, any security called for by~~
9 ~~subscription rights or warrants so designated or approved, and~~
10 ~~any warrant or right to purchase or subscribe to any of the~~
11 ~~foregoing; provided, however, that the Securities Commission~~
12 ~~may by rule limit the application of this subdivision (3) if~~
13 ~~it finds such action to be in the public interest.~~

14 ~~"(b) A registration statement under this section~~
15 ~~shall contain the following information and be accompanied by~~
16 ~~the following documents, in addition to payment of the~~
17 ~~registration fee prescribed in Section 8-6-8 and, if required~~
18 ~~under Section 8-6-12, a consent to service of process meeting~~
19 ~~the requirements of that section:~~

20 ~~"(1) A statement demonstrating eligibility for~~
21 ~~registration by notification;~~

22 ~~"(2) With respect to the issuer, its name, address,~~
23 ~~and form of organization, the state or foreign jurisdiction~~
24 ~~and the date of its organization, and the general character~~
25 ~~and location of its business;~~

26 ~~"(3) A description of the securities being~~
27 ~~registered;~~

1 ~~"(4) Total amount of securities to be offered and~~
2 ~~amount of securities to be offered in this state;~~

3 ~~"(5) The price at which the securities are to be~~
4 ~~offered for sale to the public, any variation therefrom at~~
5 ~~which any portion of the offering is to be made to any person~~
6 ~~other than an underwriting and selling discounts or~~
7 ~~commissions, and the estimated maximum aggregate underwriting~~
8 ~~and selling discounts or commissions and finders' fees,~~
9 ~~including cash, securities, or anything else of value;~~

10 ~~"(6) Names and addresses of the managing~~
11 ~~underwriters and a description of the plan of distribution of~~
12 ~~any securities which are to be offered otherwise than through~~
13 ~~an underwriter;~~

14 ~~"(7) Description of any options outstanding or to be~~
15 ~~created in connection with the securities being offered;~~

16 ~~"(8) Any adverse order or judgment previously~~
17 ~~entered in connection with the offering by any court or the~~
18 ~~Securities and Exchange Commission;~~

19 ~~"(9) A copy of an offering circular or prospectus to~~
20 ~~be used in connection with the offering;~~

21 ~~"(10) In the case of any registration under~~
22 ~~subdivision (a) (2) of this section which does not also~~
23 ~~satisfy the conditions of subdivision (a) (1) of this section,~~
24 ~~a balance sheet of the issuer as of a date within four months~~
25 ~~prior to the filing of the registration statement and a~~
26 ~~summary of earnings for each of the two fiscal years preceding~~
27 ~~the date of the balance sheet and for any period between the~~

1 ~~close of the last fiscal year and the date of the balance~~
2 ~~sheet or for the period of the issuer's and any predecessor's~~
3 ~~existence if less than two years.~~

4 ~~"(c) If no order to the contrary is in effect and no~~
5 ~~proceeding is pending under Section 8-6-9, a registration~~
6 ~~statement under this section automatically becomes effective~~
7 ~~at 3:00 P.M. central standard time on the fifth full business~~
8 ~~day after the filing of the registration statement or the last~~
9 ~~amendment, or at such earlier time as the Securities~~
10 ~~Commission determines.~~

11 ~~"(a) With respect to a federal covered security, as~~
12 ~~defined in Section 18 (b)(2) of the Securities Act of 1933 (15~~
13 ~~U.S.C. § 77 r(b)(2), that is not otherwise exempt under~~
14 ~~Sections 8-6-10 to 8-6-11, inclusive, the director may require~~
15 ~~the filing of any or all of the following records:~~

16 ~~"(1) Before the initial offer of a federal covered~~
17 ~~security in this state, all records that are part of a federal~~
18 ~~registration statement filed with the Securities and Exchange~~
19 ~~Commission under the Securities Act of 1933 and a consent to~~
20 ~~service of process complying with Section 8-6-12 signed by the~~
21 ~~issuer and the payment of fees as follows: A nonrefundable~~
22 ~~filing fee of three hundred fifty dollars (\$350) for an~~
23 ~~open-end management investment company with total net assets~~
24 ~~of twenty-five million dollars (\$25,000,000) or less; a~~
25 ~~nonrefundable filing fee of seven hundred dollars (\$700) for~~
26 ~~an open-end management investment company with total net~~
27 ~~assets of more than twenty-five million dollars (\$25,000,000),~~

1 but less than one hundred million dollars (\$100,000,000); a
2 nonrefundable filing fee of one thousand two hundred dollars
3 (\$1,200) for an open-end management investment company with
4 total net assets equal to or greater than one hundred million
5 dollars (\$100,000,000); or a nonrefundable filing fee of two
6 hundred dollars (\$200) for a unit investment trust.

7 "(2) After the initial offer of the federal covered
8 security in this state, all records that are part of an
9 amendment to a federal registration statement filed with the
10 Securities and Exchange Commission under the Securities Act of
11 1933.

12 "(3) To the extent necessary or appropriate to
13 compute fees, a report of the net value of assets under
14 management as of the date of filing, if the data are not
15 included in records filed with the commission.

16 "(b) A notice filing under subsection (a) is
17 effective for one year commencing on the later of the filing
18 or the effectiveness of the offering filed with the Securities
19 and Exchange Commission. On or before expiration, the issuer
20 may renew a notice filing by filing a copy of those records
21 filed by the issuer with the commission that are required by
22 rule or order under this chapter to be filed and by paying a
23 renewal fee prescribed in subdivision (1) of subsection (a). A
24 previously filed consent to service of process complying with
25 Section 8-6-12 may be incorporated by reference in a renewal.
26 A renewed notice filing becomes effective upon the expiration
27 of the filing being renewed.

1 "(c) With respect to a security that is a federal
2 covered security under Section 18(b)(4)(D), a rule adopted
3 under this chapter may require a notice filing by or on behalf
4 of an issuer to include a copy of Form D, including the
5 Appendix, as promulgated by the commission, and a consent to
6 service of process complying with Section 8-6-12, signed by
7 the issuer not later than 15 days after the first sale of the
8 federal covered security in this state and the payment of a
9 fee of three hundred dollars (\$300). An additional fee of
10 three hundred dollars (\$300) shall be paid for any late
11 filing.

12 "(d) Except with respect to a federal security under
13 Section 18(b)(1) of the Securities Act of 1933 15 U.S.C.
14 Section 77 r(b)(1), if the director finds that there is a
15 failure to comply with a notice or fee requirement of this
16 section, the director may issue a cease and desist order
17 suspending the offer and sale of a federal covered security in
18 this state. If the deficiency is corrected, the cease and
19 desist order is void as of the time of its issuance and no
20 penalty may be imposed by the director except as described in
21 subsection (c).

22 "(e) Fees collected under this section shall be
23 deposited in the Alabama Securities Commission Fund in the
24 State Treasury for the use of the commission in the
25 administration of this chapter.

26 "§8-6-8.

1 "(a) A registration statement on securities may be
2 filed by the issuer, any other person on whose behalf the
3 offering is to be made, or a registered dealer. Any document
4 filed under this article within five years preceding the
5 filing of a registration statement may be incorporated by
6 reference in the registration statement to the extent that the
7 document is currently accurate. The commission may permit, by
8 rule or otherwise, the omission of any item of information or
9 document from any registration statement.

10 "(b) The Securities Commission may require as a
11 condition of registration by qualification or coordination
12 that: (1) proceeds from the sale of the registered security be
13 impounded until the issuer receives a specified amount, or (2)
14 any security issued within the past three years, or to be
15 issued, to a promoter for a consideration substantially
16 different from the public offering price or to any person for
17 a consideration other than cash be delivered in escrow to him
18 or her or to some other depository satisfactory to him or her
19 under an escrow agreement that the owners of such securities
20 shall not be entitled to sell or transfer such securities or
21 to withdraw such securities from escrow until all other
22 stockholders who have paid for their stock in cash shall have
23 been paid a dividend or dividends aggregating not less than
24 six percent of the initial offering price shown to the
25 satisfaction of the commission to have been actually earned on
26 the investment in any common stock so held. The commission
27 shall not reject a depository solely because of location in

1 another state. In case of dissolution or insolvency during the
2 time such securities are held in escrow, the owner of such
3 securities shall not participate in the assets until after the
4 owners of all other securities shall have been paid in full.

5 "(c) The Securities Commission shall take official
6 action on the application for registration by qualification
7 within 60 days after the application has been filed and give
8 written notice thereof, to the applicant or applicants. If the
9 application is denied, the notice shall state the grounds for
10 denial or, if action is delayed, the notice shall state the
11 reasons for the delay.

12 ~~"(d) For the registration of securities there shall~~
13 ~~be paid to the Securities Commission a filing fee of \$40, plus~~
14 ~~a registration fee of one tenth of one percent of the~~
15 ~~aggregate offering price of the securities which are to be~~
16 ~~offered in this state, but the registration fee shall in no~~
17 ~~case be more than \$1,000~~ A person filing a registration
18 statement shall pay a nonrefundable filing fee equal to one
19 tenth of one percent of the aggregate offering price of the
20 securities that are to be offered in this state. The fee in no
21 case may be more than one thousand five hundred dollars
22 (\$1,500) nor less than one hundred dollars (\$100). When a
23 registration statement is withdrawn before the effective date
24 or a pre-effective order is entered under Section 8-6-9, the
25 commission shall retain the filing and registration fees. ~~An~~
26 ~~open-end management company, a face amount certificate~~
27 ~~company, or a unit investment trust, as defined in the~~

1 ~~Investment Company Act of 1940, may register an indefinite~~
2 ~~amount of securities under a registration statement. Such~~
3 ~~registrant, at the time of filing, shall pay the filing fee of~~
4 ~~\$40 and a registration fee of \$1,000 and within~~ Within 60 days
5 after the end of each year during which its registration
6 statement is effective, the registrant shall file a report on
7 a form the commission, by rule, adopts, specifying its sale of
8 securities to persons in this state during such year. Such
9 registrant shall pay the same registration fee each year
10 during which the registration statement remains in effect.

11 "(e) When securities are registered, they may be
12 offered and sold by the issuer, any other person on whose
13 behalf they are registered, or by any registered dealer. Every
14 registration statement is effective for one year from its
15 effective date, or any longer period during which the security
16 is being offered or distributed in a nonexempted transaction
17 by or for the account of the issuer or other person on whose
18 behalf the offering is being made or by any underwriter or
19 dealer who is still offering part of an unsold allotment or
20 subscription taken by him or her as a participant in the
21 distribution, except during the time an order is in effect
22 under Section 8-6-9. All outstanding securities of the same
23 class as a registered security are considered to be registered
24 for the purpose of any nonissuer transaction: (1) so long as
25 the registration statement is effective, and (2) between the
26 thirtieth day after the entry of any order suspending or
27 revoking the effectiveness of the registration statement under

1 Section 8-6-9, if the registration statement did not relate in
2 whole or in part to a nonissuer distribution, and one year
3 from the effective date of the registration statement. A
4 registration statement which has become effective may not be
5 withdrawn for a period of one year from its effective date if
6 any securities of the same class are outstanding. A
7 registration statement may be withdrawn otherwise only in the
8 discretion of the commission.

9 "(f) The Securities Commission may require the
10 person who filed the registration statement to file reports,
11 but not more often than quarterly, to keep reasonably current
12 the information contained in the registration statement and to
13 disclose the progress of the offering with respect to
14 securities registered by coordination and notification;
15 provided, however, that where a registration statement has
16 been filed by a person other than the issuer or an affiliate
17 of the issuer, the commission may require such person to file
18 such reports on an annual basis only.

19 "(g) Every issuer whose securities have been
20 registered by qualification and the registration of whose
21 securities has not been cancelled and who has not been
22 discharged from filing further quarterly reports under the
23 provisions of subsection (i) of this section shall file within
24 30 days after the close of business on December 31, March 31,
25 June 30, and September 30 of each year and at such other
26 reasonable times as may be required by the Securities
27 Commission, a statement, verified under oath by some person

1 having actual knowledge of the facts therein stated, setting
2 forth, in such form as may be prescribed by the commission,
3 the financial condition, the amount of assets and liabilities
4 of such issuer on the above date and such other information as
5 the commission may require. If any issuer subject to the
6 provisions of this subsection shall willfully fail or refuse
7 to comply with any of the provisions of this subsection and
8 shall continue to so fail or refuse for 30 days after notice
9 or demand, the registration statement of ~~said~~ the issuer's
10 securities shall thereupon be revoked, and it shall thereafter
11 be unlawful for any such issuer, his or her agent or agents,
12 any dealer or salesman to sell such securities in this state.

13 "(h) Any issuer, whose securities have been
14 registered by qualification as provided in Section 8-6-7, who
15 has completed the sale of the securities so registered, or who
16 desires to discontinue the sale of said registered securities,
17 and who desires to be discharged from further supervision of
18 the Securities Commission or from further compliance with the
19 Alabama securities law may file with the commission a notice
20 in writing to such effect, and the commission may thereupon
21 enter an order cancelling the registration of such securities;
22 and such issuer shall thereupon be discharged from filing any
23 financial report except as the commission may require up to
24 and including the date of the filing of ~~said~~ the notice as
25 hereinabove provided. No such notice may be filed within one
26 year after the effective date of the registration statement if

1 any securities of the same class as those registered are
2 outstanding.

3 "\$8-6-10.

4 "Sections 8-6-4 through 8-6-9 shall not apply to any
5 of the following securities:

6 "(1) Any security, including a revenue obligation,
7 issued or guaranteed by the United States, any state, any
8 political subdivision of a state, any agency, corporate, or
9 other instrumentality of one or more of the foregoing; or any
10 certificate of deposit for any of the foregoing.

11 "(2) Any security issued or guaranteed by Canada,
12 any Canadian province, any political subdivision of any
13 province, any agency, corporate, or other instrumentality of
14 one or more of the foregoing or any other foreign government
15 with which the United States currently maintains diplomatic
16 relations if the security is recognized as a valid obligation
17 by the issuer or guarantor.

18 "(3) Any security issued by and representing an
19 interest in or a debt of, or guaranteed by, any bank organized
20 under the laws of the United States or any bank, savings
21 institution, or trust company organized and supervised under
22 the laws of this state.

23 "(4) Any security issued by and representing an
24 interest in, a debt of, or guaranteed by any federal savings
25 and loan association or any building and loan or similar
26 association organized under the laws of this state.

1 "(5) Any security issued or guaranteed by any
2 federal credit union or any credit union, industrial loan
3 association, or similar association organized and supervised
4 under the laws of this state.

5 "(6) Any security issued or guaranteed by any
6 railroad, other common carrier, public utility, or holding
7 company which is any of the following:

8 "a. Subject to the jurisdiction of the Interstate
9 Commerce Commission.

10 "b. A registered holding company under the Public
11 Utility Holding Company Act of 1935 or a subsidiary of a
12 company within the meaning of that act.

13 "c. Regulated in respect to its rates and charges by
14 a governmental authority of the United States or any state.

15 "d. Regulated in respect to the issuance or
16 guarantee of the security by a governmental authority of the
17 United States, any state, Canada, or any Canadian province.

18 "(7) Any national market system security under
19 Section 11A of the Securities Exchange Act of 1934 (including
20 any other security of the same issuer which is of senior or
21 substantially equal rank; any security called for by
22 subscription rights or warrants so designated or approved; and
23 any warrant or right to purchase or subscribe to any of the
24 foregoing) which is so designated or approved for designation
25 upon notice of issuance on an interdealer quotation system
26 operated by a national securities association registered under
27 Section 15A of the Securities Exchange Act of 1934, or any

1 security (including any other security of the same issuer
2 which is of senior or substantially equal rank; any security
3 called for by subscription rights or warrants so designated or
4 approved; and any warrant or right to purchase or subscribe to
5 any of the foregoing) which is listed or approved for listing
6 upon notice of issuance on a national securities exchange
7 registered under Section 6 of the Securities Exchange Act of
8 1934, if the listing or designation criteria applicable to the
9 issuer of that security provide minimum corporate governance
10 standards substantially equivalent to those applicable to
11 securities on the New York Stock Exchange, the American Stock
12 Exchange, or the National Association of Securities Dealers
13 National Market System as of January 1, 1991. The commission
14 may by order deny, revoke, or suspend the exemption of a
15 specific issue of securities or by rule any category of
16 securities when necessitated by the public interest and for
17 the protection of investors.

18 "(8) Any security issued by any person organized and
19 operated not for private profit but exclusively for religious,
20 educational, benevolent, charitable, fraternal, social,
21 athletic, or reformatory purposes or as a chamber of commerce,
22 trade, or professional association, provided the issuer first
23 files with the commission a written notice specifying the
24 terms of the offer and the commission does not by order
25 disallow the exemption within 15 days thereof.

26 "(9) Any commercial paper which arises out of a
27 current transaction or the proceeds of which have been or are

1 to be used for current transactions and which evidences an
2 obligation to pay cash within nine months of the date of
3 issuance, exclusive of days of grace, or any renewal of the
4 paper which is likewise limited or any guarantee of the paper
5 or of any renewal.

6 "(10) Any investment contract issued in connection
7 with an employee's stock purchase, savings, pension,
8 profit-sharing, or similar benefit plan.

9 ~~"(11) A security issued by an issuer registered as~~
10 ~~an open-end management investment company or unit investment~~
11 ~~trust under Section 8 of the Investment Company Act of 1940~~
12 ~~if:~~

13 ~~"a.1. The issuer is advised by an investment adviser~~
14 ~~that is a depository institution exempt from registration~~
15 ~~under the Investment Advisers Act of 1940 or that is currently~~
16 ~~registered as an investment adviser, and has been registered,~~
17 ~~or is affiliated with an adviser that has been registered, as~~
18 ~~an investment adviser under the Investment Advisers Act of~~
19 ~~1940 for at least three years next preceding an offer or sale~~
20 ~~of a security claimed to be exempt under this paragraph; and~~
21 ~~the adviser has acted, or is affiliated with an investment~~
22 ~~adviser that has acted, as investment adviser to one or more~~
23 ~~registered investment companies or unit investment trusts for~~
24 ~~at least three years next preceding an offer or sale of a~~
25 ~~security claimed to be exempt under this paragraph; or~~

26 ~~"2. The issuer has a sponsor that has at all times~~
27 ~~throughout the three years before an offer or sale of a~~

1 ~~security claimed to be exempt under this paragraph sponsored~~
2 ~~one or more registered investment companies or unit investment~~
3 ~~trusts the aggregate total assets of which have exceeded~~
4 ~~\$100,000,000.~~

5 ~~"b. The Securities Commission has received prior to~~
6 ~~the offer or sale of the securities exempted here:~~

7 ~~"1. A notice of intention to sell which has been~~
8 ~~executed by the issuer and which sets forth the name and~~
9 ~~address of the issuer and the description of the securities to~~
10 ~~be offered in this state; and~~

11 ~~"2. A nonrefundable filing fee of \$300 for an~~
12 ~~open-end management investment company with total net assets~~
13 ~~of \$25,000,000 or less, or a nonrefundable filing fee of \$600~~
14 ~~for an open-end management investment company with total net~~
15 ~~assets of more than \$25,000,000 but less than \$100,000,000, or~~
16 ~~a nonrefundable filing fee of \$1,000 for an open-end~~
17 ~~management investment company with total net assets equal to~~
18 ~~or greater than \$100,000,000; or a nonrefundable filing fee of~~
19 ~~\$200 for a unit investment trust. Fees collected under this~~
20 ~~section shall be deposited in the Alabama Securities~~
21 ~~Commission Fund in the State Treasury for the use of the~~
22 ~~Alabama Securities Commission in the administration of this~~
23 ~~article.~~

24 ~~"c. In the event any offer or sale of a security of~~
25 ~~an open-end management investment company is to be made more~~
26 ~~than 12 months after the date notice under paragraph (b) is~~

1 ~~received by the director, another notice and payment of the~~
2 ~~applicable fee shall be required.~~

3 ~~"d. For the purpose of this subdivision an~~
4 ~~investment adviser is affiliated with another investment~~
5 ~~adviser if it controls, is controlled by, or is under common~~
6 ~~control with the other investment adviser.~~

7 ~~"§8-6-11.~~

8 "(a) Except as hereinafter in this section expressly
9 provided, Sections 8-6-3 through 8-6-9 shall not apply to any
10 of the following transactions:

11 "(1) Any isolated nonissuer transaction, whether
12 effected through a dealer or not;

13 "(2) Any nonissuer transaction in an outstanding
14 security by a registered dealer if:

15 "a. The issuer has a class of securities subject to
16 registration under Section 12 of the Securities Exchange Act
17 of 1934 and has been subject to the reporting requirements of
18 Sections 13 or 15(d) of the Securities Exchange Act of 1934
19 for not less than 180 days before the transaction; or has
20 filed and maintained with the commission for not less than 180
21 days before the transaction information, in such form as the
22 commission, by rule, specifies, substantially comparable to
23 the information which the issuer would be required to file
24 under Section 12(b) or Section 12(g) of the Securities
25 Exchange Act of 1934, or the securities have been the subject
26 of an effective registration statement within 180 days before
27 the transaction, or the issuer is required to file and has

1 filed all reports under Section 13 of the Securities Exchange
2 Act of 1934, or the issuer is exempted from registration by
3 Section 12(g)(3) of the Securities Exchange Act of 1934, it or
4 its predecessor in interest has been in existence for at least
5 five years, the security is listed for trading on a foreign
6 securities exchange and has been trading for at least six
7 months and continues to trade on such exchange, and the
8 aggregate market value of shares, the ownership of which is
9 unrestricted, is not less than \$500,000,000; or

10 "b. The issuer is an investment company registered
11 under the Investment Company Act of 1940 and has been subject
12 to the reporting requirements of Section 30 of that act for
13 not less than 180 days before the transaction; or

14 "c. The security has a fixed maturity or a fixed
15 interest or dividend provision and there has been no default
16 during the current fiscal year, within the three preceding
17 fiscal years, or during the existence of the issuer and any
18 predecessors if less than three years in the payment of
19 principal, interest, or dividends on the security;

20 "(3) Any nonissuer transaction effected by or
21 through a registered dealer pursuant to an unsolicited order
22 or offer to buy;

23 "(4) Any transaction between the issuer or other
24 person on whose behalf the offering is made and an underwriter
25 or among underwriters;

26 "(5) Any transaction in a bond or other evidence of
27 indebtedness secured by a real or chattel mortgage or deed of

1 trust or by an agreement for the sale of real estate or
2 chattels if the entire mortgage, deed of trust, or agreement,
3 together with all the bonds or other evidences of indebtedness
4 secured thereby, is offered and sold as a unit;

5 "(6) Any sale or the offering for sale of any
6 security at any judicial, executor's, administrator's,
7 guardian, or conservator's sale, or at any sale by a receiver
8 or trustee in insolvency or bankruptcy;

9 "(7) Any transaction executed by a bona fide pledge
10 without any purpose of evading this article;

11 "(8) Any offer or sale to a bank, savings
12 institution, credit union, trust company, insurance company or
13 investment company as defined in the Investment Company Act of
14 1940, pension or profit-sharing trust, or other financial
15 institution or institutional buyer, or to a dealer, whether
16 the purchaser is acting for itself or in some fiduciary
17 capacity;

18 "(9) Any transaction which is part of an issue of
19 which there are no more than 10 purchasers [other than those
20 designated in subdivision (a)(8) of this section] wherever
21 located, of securities from the issuer during any period of 12
22 consecutive months if:

23 "a. The issuer reasonably believes that all the
24 buyers are purchasing for investment and not with a view to
25 distribution, and such issuer exercises reasonable care to
26 assure this investment intent, which reasonable care shall be
27 presumed if the following conditions are satisfied:

1 "1. Reasonable inquiry to determine if the purchaser
2 is acquiring the securities for himself or herself or for
3 other persons;

4 "2. Written disclosure to each purchaser prior to
5 sale that the securities have not been registered under the
6 act and, therefore, cannot be resold unless they are
7 registered under the act or unless an exemption from
8 registration is available;

9 "3. Placement of a legend on the certificate or
10 other document that evidences the securities stating that the
11 securities have not been registered under the act and setting
12 forth or referring to the restrictions on transferability and
13 sale of the securities; and

14 "b. No commission or other remuneration is paid or
15 given directly or indirectly for soliciting any prospective
16 buyer; and

17 "c. No public advertising or general solicitation is
18 used in connection with the issue of which the transaction in
19 reliance on this exemption is a part.

20 "Sections 8-6-3 through 8-6-9 shall not apply to any
21 offer made pursuant to this subdivision (a)(9) in which no
22 sale results.

23 "But the Securities Commission may by rule or order,
24 as to any security or transaction or any type of security or
25 transaction, withdraw or further condition this exemption or
26 decrease or increase the number of purchasers permitted, or
27 waive the conditions in paragraphs a. and b. of this

1 subdivision (9) with or without the substitution of a
2 limitation on remuneration.

3 "(10) Any transaction pursuant to an offer to
4 existing security holders of the issuer, including persons who
5 at the time of the transaction are holders of convertible
6 securities, nontransferable warrants or transferable warrants
7 exercisable within not more than 90 days of their issuance,
8 if:

9 "a. No commission or other remuneration, other than
10 a standby commission, is paid or given directly or indirectly
11 for soliciting any security holder in this state; or

12 "b. The issuer first files a notice specifying the
13 terms of the offer and the Securities Commission does not by
14 order disallow the exemption within the next five full
15 business days;

16 "(11) Any offer, but not a sale, of a security for
17 which registration statements have been filed under both this
18 article and the Securities Act of 1933 if no order of denial,
19 suspension, or revocation is in effect and no public
20 proceeding or examination looking toward such an order is
21 pending under either act;

22 "(12) The issuance of any stock dividend, whether
23 the corporation distributing the dividend is the issuer of the
24 stock or not, if nothing of value is given by stockholders for
25 the distribution other than the surrender of a right to a cash
26 dividend where the stockholder can elect to take a dividend in
27 cash or stock;

1 "(13) Any transaction incident to a right of
2 conversion or a statutory or judicially approved
3 reclassification, recapitalization, reorganization,
4 quasi-reorganization, stock split, reverse stock split,
5 merger, consolidation, or sale of assets; or

6 "(14) Any transaction by an issuer if:

7 "a. The aggregate amount of the total offering,
8 within or without this state, shall not exceed \$500,000, less
9 the aggregate offering price of all securities sold within 12
10 months before the start of and during the offering of
11 securities under this subsection or in reliance on the
12 exemption contained in paragraph a. of subdivision (a)(9) of
13 this section or which have been sold in violation of Section
14 8-6-4.

15 "b. No person purchases more than \$15,000 of the
16 securities offered and sold in reliance upon the exemption
17 contained in this paragraph, except that this limitation on
18 the amount that may be purchased shall not apply to
19 "accredited investors" as defined in 17 Code of Federal
20 Regulations §230.501.

21 "c. A disclosure document is delivered to any
22 purchaser of the securities sold pursuant to this exemption
23 prior to or simultaneously with the execution by the purchaser
24 of a written agreement to purchase, the delivery of a
25 confirmation of sale, or the payment for securities offered by
26 means of such disclosure document, whichever occurs first. The

1 disclosure document under which securities are sold pursuant
2 to this exemption shall contain the following:

3 "1. With respect to the issuer: its name, street
4 address, form of organization, and its telephone number; the
5 state or foreign jurisdiction and the date of its
6 organization; a brief description of the type and location of
7 its business;

8 "2. A brief description of the material risks
9 associated with the purchase of the securities;

10 "3. The use of proceeds from the offering, including
11 a description of expenses, commissions and fees paid in
12 connection with the offering and the net proceeds available
13 for use by the issuer;

14 "4. A description of the capital stock of the issuer
15 if a corporation or the equity ownership if an organization
16 other than a corporation, including, where appropriate, the
17 number of shares of capital stock issued and outstanding, the
18 number of shares owned by management, and the options
19 outstanding, if any, and the average exercise price for such
20 options;

21 "5. The dilution, if any, to purchasers of the
22 securities offered for sale pursuant to this exemption;

23 "6. A description of the management of the issuer
24 and material transactions between the issuer and management;

25 "7. A statement that additional information
26 concerning the issuer may be obtained upon request, including,

1 where applicable, articles of incorporation or partnership
2 agreement;

3 "8. The following financial statements which may,
4 but need not, be certified: (i) a balance sheet of the issuer
5 or a consolidated balance sheet of the issuer and its
6 subsidiaries prepared in accordance with generally accepted
7 accounting principles, as of a date within ninety days prior
8 to the first offer of sale; and (ii) a profit and loss
9 statement of the issuer or consolidated statement of the issue
10 and its subsidiaries prepared in accordance with generally
11 accepted accounting principles for each of the two fiscal
12 years preceding the date of the balance sheet referred to
13 above and for the interim period, if any, between the close of
14 the most recent of such fiscal years and the date of the
15 balance sheet and for the corresponding period of the
16 preceding year or if the issuer and its predecessor have been
17 in existence for less than two fiscal years, the profit and
18 loss statement for the period for which it has been in
19 existence;

20 "9. The disclosure document shall contain
21 substantially the following information shown boldly on the
22 outside cover:

23 "The securities are offered pursuant to a claim of
24 exemption under the Alabama Securities Act. A registration
25 statement relating to these securities has not been filed with
26 the Alabama Securities Commission. The commission does not
27 recommend or endorse the purchase of any securities, nor does

1 it pass upon the accuracy or completeness of this private
2 placement memorandum. Any representation to the contrary is a
3 criminal offense.

4 "10. The commission may, by rule or order, require
5 as a condition of exemption under this subdivision (a)(14)
6 that the disclosure document contain any designated part of
7 the information as would be required by Part 1 of Form S-18,
8 Code of Federal Regulations 239.28 not otherwise disclosed by
9 this subdivision (a)(14), or permit the omission of any item
10 of information from the disclosure document.

11 "d. The seller reasonably believes that all buyers
12 are purchasing for investment.

13 "e. No commission, finders fee or other remuneration
14 shall be paid or given, directly or indirectly, to any person
15 for soliciting any prospective purchaser in this state, unless
16 such person is registered in this state pursuant to Section
17 8-6-3.

18 "f. If the issuer is a corporation, its principal
19 office and a majority of its full-time employees are located
20 in this state.

21 "g. If the issuer is a limited partnership, at least
22 80 percent of its assets are located in this state.

23 "h. At least 80 percent of the proceeds of the
24 offering under this subdivision (a)(14) are used in the
25 issuers operations in this state.

1 "i. At least 80 percent of the net proceeds of the
2 offering under this subdivision (a)(14) are committed for use
3 in a specific business.

4 "j. Securities offered or sold under this
5 subdivision (a)(14) are not offered or sold on credit or
6 credit terms.

7 "k. Offers and sales which are exempt under this
8 subdivision (a)(14) are not combined with offers and sales by
9 issuers in transactions which are exempt under any other rule
10 or section of this article.

11 "l. No exemption under this rule shall be available
12 for the securities of any issuer if any of the parties
13 described in Rule 252(c), (d), (e) or (f) of Regulation A, 17
14 Code of Federal Regulations §230.252(c), (d), (e), and (f),
15 adopted under the Securities Act of 1933 (generally described
16 as: the issuer, any of its predecessors or any affiliated
17 issuer; any of the directors, officers, general partners, or
18 beneficial owners of 10 percent or more of any equity
19 securities of the issuer; any underwriter of the securities or
20 any partner, director, or officer of any such underwriter; or
21 any issuer subject to the reporting requirements of the
22 Securities Exchange Act of 1934 who has failed to file
23 required reports):

24 "1. Has filed a registration statement which is the
25 subject of a currently effective registration stop order
26 entered pursuant to any state's securities law within five

1 years prior to the filing of the notice required under this
2 exemption.

3 "2. Has been convicted within five years prior to
4 the filing of the notice required under this exemption of any
5 felony or misdemeanor in connection with the offer, purchase
6 or sale of any security or any felony involving fraud or
7 deceit, including but not limited to forgery, embezzlement,
8 obtaining money under false pretenses, larceny, or conspiracy
9 to defraud.

10 "3. Is currently subject to any state administrative
11 enforcement order or judgment entered by that state's
12 securities administrator within five years prior to the filing
13 of the notice required under this exemption or is subject to
14 any state's administrative enforcement order or judgment in
15 which fraud or deceit, including but not limited to making
16 untrue statements of material facts and omitting to state
17 material facts, was found and the order or judgment was
18 entered within five years prior to the filing of the notice
19 required under this exemption.

20 "4. Is subject to any state's administrative
21 enforcement order or judgment which prohibits, denies, or
22 revokes the use of any exemption from registration in
23 connection with the offer, purchase, or sale of securities.

24 "5. Is currently subject to any order, judgment, or
25 decree of any court of competent jurisdiction temporarily or
26 preliminarily restraining or enjoining, or is subject to any
27 order, judgment, or decree of any court of competent

1 jurisdiction, permanently restraining or enjoining, such party
2 from engaging in or continuing any conduct or practice in
3 connection with the purchase or sale of any security or
4 involving the making of any false filing with the state
5 entered within five years prior to the filing of the notice
6 required under this exemption.

7 "6. The prohibitions of subparagraphs 1, 2, 3, and 5
8 above shall not apply if the person subject to the
9 disqualification is duly licensed or registered to conduct
10 securities-related business in the state in which the
11 administrative order of judgment was entered against such
12 person or if the broker/dealer employing such party is
13 licensed or registered in this state and the Form B-D filed
14 with this state discloses the order, conviction, judgment, or
15 decree relating to such person. No person disqualified under
16 this subsection may act in a capacity other than that for
17 which the person is licensed or registered.

18 "7. Any disqualification caused by this section may
19 be waived if the state securities administrator or agency of
20 the state which created the basis for disqualification
21 determines upon a showing of good cause that it is not
22 necessary under the circumstances that the exemption be
23 denied.

24 "8. The disqualification found in 17 Code of Federal
25 Regulations §230 of Regulation D, shall apply also to
26 offerings made pursuant to Rule 506 of the Code of Federal
27 Regulations.

1 "m. The issuer shall file with the Securities
2 Commission:
3 "1. An application for exemption on Form D, 17 Code
4 of Federal Regulations §239.500 no later than five full
5 business days prior to the commencement of the offering in
6 this state. The application for exemption shall include two
7 copies of all information furnished by the issuer to any of
8 the offerees. The commission shall issue an order of
9 exemption, notice of deficiency, or denial of exemption within
10 the five full day business period;
11 "2. A notice of Part C of Form D, 17 Code of Federal
12 Regulations §239.500, no later than 30 days after the
13 completion date of the offering;
14 "3. The notice of Form D, 17 Code of Federal
15 Regulations §239.500, required by subparagraphs 1. and 2.
16 above shall be manually signed by a person duly authorized by
17 the issuer;
18 "4. Every application for exemption provided for in
19 subparagraph i. above shall be accompanied by a nonrefundable
20 filing fee of \$150. Such filing fee shall be deposited in the
21 Alabama Securities Commission Fund in the State Treasury to be
22 drawn upon by the commission for its use in administration of
23 this article. All applications for exemption and notices on
24 Form D, 17 Code of Federal Regulations §239.500 shall be
25 considered filed with the Securities Commission as of the date
26 on which received at the office of the Securities Commission;

1 "5. Unless otherwise available, included with or in
2 the initial notice shall be a consent to service of process as
3 provided for in Section 8-6-12.

4 "But the Securities Commission may by rule or order,
5 as to any security or transaction of any type of security or
6 transaction, withdraw or further condition this exemption.

7 "(b) The Securities Commission may by order deny or
8 revoke the exemption specified in this section with respect to
9 a specific security if it finds the sale of such security
10 would work or tend to work a fraud upon the purchasers
11 thereof. No order under this subsection may operate
12 retroactively. No person may be considered to have violated
13 this article by reason of any offer or sale effected after the
14 entry of an order under this subsection if he or she sustains
15 the burden of proof that he or she did not know and in the
16 exercise of reasonable care could not have known of the order.
17 In any proceeding under this article, the burden of proving an
18 exemption from a definition is upon the person claiming it.

19 "(c) Any individual, corporation, partnership, or
20 association who makes application to the Securities Commission
21 for any exemption from full registration under subdivision
22 (a)(9) of this section shall be assessed a filing fee in the
23 amount of ~~\$250~~ three hundred dollars (\$300) upon application
24 for such exemption. ~~Said~~ The fee shall accompany the
25 application and shall not be refunded whether the application
26 is approved or rejected. Fees collected under this subsection
27 shall be deposited in a special account in the State Treasury

1 for the use of the commission in the administration of this
2 article.

3 "§8-6-18.

4 "(a) ~~Any~~ A person who that willfully violates ~~any~~
5 ~~provisions of this article shall~~ Section 8-6-3 or Section
6 8-6-4, upon conviction, shall be guilty of a Class C felony.
7 ~~No prosecution may be commenced under this article more than~~
8 ~~five years after the alleged violation. A person that~~
9 willfully violates subsection (a), (b), or (c) of Section
10 8-6-17, upon conviction, shall be guilty of a Class B felony.

11 "(b) ~~Any~~ A person who that willfully violates any
12 ~~rule or order under this article shall,~~ provision of this
13 chapter, other than those noted in subsection (a), or a rule
14 adopted or order issued under this chapter, upon conviction,
15 shall be guilty of a Class A misdemeanor.

16 "(c) The enforcement of the provisions of this
17 article shall be vested in the ~~Securities Commission~~
18 commission. It shall be the duty of the commission to see that
19 its provisions are at all times obeyed and to take such
20 measures and to make such investigations as will prevent or
21 detect the violation of any provision thereof. The commission
22 shall at once lay before the district attorney of the proper
23 county any evidence which shall come to its knowledge of
24 criminality under this article. In the event of the neglect or
25 refusal of the district attorney to institute and prosecute
26 such violation, the commission shall be authorized to proceed
27 therein with all the rights, privileges, and powers conferred

1 by law upon district or court attorneys including the power to
2 appear before grand juries and to interrogate witnesses before
3 such grand juries.

4 "(d) Nothing in this article limits the power of the
5 state to punish any person for any conduct which constitutes a
6 crime by statute or at common law.

7 "(e) In any proceeding under this article, scienter
8 need not be alleged and proved in prosecutions involving the
9 sale of unregistered securities or in the failure to register
10 as a dealer, agent, investment adviser, or investment adviser
11 representative under this article.

12 "§8-6-19.

13 "(a) Any person who:

14 "(1) Sells or offers to sell a security in violation
15 of any provision of this article or of any rule or order
16 imposed under this article or of any condition imposed under
17 this article, or

18 "(2) Sells or offers to sell a security by means of
19 any untrue statement of a material fact or any omission to
20 state a material fact necessary in order to make the
21 statements made, in the light of the circumstances under which
22 they are made, not misleading, the buyer not knowing of the
23 untruth or omission, and who does not sustain the burden of
24 proof that he or she did not know and in the exercise of
25 reasonable care could not have known of the untruth or
26 omission,

1 is liable to the person buying the security from him or her
2 who may bring an action to recover the consideration paid for
3 the security, together with interest at six percent per year
4 from the date of payment, court costs and reasonable
5 attorneys' fees, less the amount of any income received on the
6 security, upon the tender of the security, or for damages if
7 he or she no longer owns the security. Damages are the amount
8 that would be recoverable upon a tender less the value of the
9 security when the buyer disposed of it and interest at six
10 percent per year from the date of disposition.

11 "(b)(1) Any person who engages in the business of
12 advising others, for compensation, either directly or through
13 publications or writings, as to the value of securities or as
14 to the advisability of investing in, purchasing, or selling
15 securities, or who, for compensation and as part of a regular
16 business, issues or promulgates analyses or reports concerning
17 securities in violation of subsection (b), (c), (d), (e), or
18 (f) of Section 8-6-17, subsection (b) or (c) of Section 8-6-3,
19 Section 8-6-14, is liable to that person, who may bring an
20 action to recover the consideration paid for such advice and
21 any loss due to such advice, together with interest at six
22 percent per year from the date of payment of the consideration
23 plus costs and reasonable attorney's fees, less the amount of
24 any income received from such advice.

25 "No person may maintain an action hereunder pursuant
26 to a violation of subsection (c) of Section 8-6-3 based solely
27 on the fact that an investment adviser representative other

1 than the one from whom the person received advice is
2 unregistered.

3 "(2) Any person who receives, directly or
4 indirectly, any consideration from another person for advice
5 as to the value of securities or their purchase or sale,
6 whether through the issuance of analyses, reports, or
7 otherwise and employs any device, scheme, or artifice to
8 defraud such other person or engages in any act, practice, or
9 course of business which operates or would operate as a fraud
10 or deceit on such other person, is liable to that person, who
11 may bring an action to recover the consideration paid for such
12 advice and any loss due to such advice, together with interest
13 at six percent per year from the date of payment of the
14 consideration plus costs and reasonable attorney's fees, less
15 the amount of any income received from such advice.

16 "An action based on a violation of subsection (c) of
17 Section 8-6-17 and this section may not prevail where the
18 person accused of the violation sustains the burden of proof
19 that he or she did not know, and in the exercise of reasonable
20 care, could not have known of the existence of the facts by
21 reason of which the liability is alleged to exist.

22 "(c) Every person who directly or indirectly
23 controls a person liable under subsections (a) or (b) of this
24 section, including every partner, officer, or director of such
25 a person, every person occupying a similar status or
26 performing similar functions, every employee of such a person
27 who materially aids in the conduct giving rise to the

1 liability, and every dealer or agent who materially aids in
2 such conduct is also liable jointly and severally with and to
3 the same extent as the person liable under subsection (a) or
4 (b), unless he or she is able to sustain the burden of proof
5 that he or she did not know, and in exercise of reasonable
6 care could not have known, of the existence of the facts by
7 reason of which the liability is alleged to exist.

8 "(d) Any tender specified in this section may be
9 made at any time before entry of judgment.

10 "(e) Every cause of action under this section
11 survives the death of any person who might have been a
12 plaintiff or defendant.

13 "(f) No person may obtain relief under this section
14 in an action involving the failure to register unless suit is
15 brought within two years from the date of sale. All other
16 actions for relief under this section ~~must~~ shall be brought
17 within the earlier of two years after discovery of the
18 violation or two years after discovery should have been made
19 by the exercise of reasonable care. No person may bring an
20 action under subsection (a) of this section:

21 "(1) If the buyer received a written offer, before
22 the action and at a time when he or she owned the security, to
23 refund the consideration paid together with interest at six
24 percent per year from the date of payment, less the amount of
25 any income received on the security, and he or she failed to
26 accept the offer within 30 days of its receipt, or

1 "(2) If the buyer received such an offer before the
2 action and at a time when he or she did not own the security,
3 unless he or she rejected the offer in writing within 30 days
4 of its receipt.

5 "(g) No person who has made or engaged in the
6 performance of any contract in violation of any provision of
7 this article or any rule or order hereunder or who has
8 acquired any purported right under any such contract with
9 knowledge of the facts by reason of which its making or
10 performance was in violation, may base any action on the
11 contract.

12 "(h) Any condition, stipulation, or provision
13 binding any person acquiring any security or receiving any
14 investment advice to waive compliance with any provision of
15 this article or any rule or order hereunder is void.

16 "(i) The rights and remedies provided by this
17 article are in addition to any other rights or remedies that
18 may exist.

19 "(j)(1) The commission may by order, if it finds
20 such order to be in the public interest, impose an
21 administrative assessment upon any person who violates any
22 provision of this article or any rule or order issued under
23 this article.

24 "~~(2) Any administrative assessment imposed under~~
25 ~~this section shall not exceed \$5,000 for each act or omission~~
26 ~~that constitutes the basis for an order issued under this~~
27 ~~section, except that the amount of the administrative~~

1 ~~assessment may not exceed \$50,000 for any person subject to~~
2 ~~the order. In a final order under this chapter, the commission~~
3 ~~may also impose a civil penalty of up to fifty thousand~~
4 ~~dollars (\$50,000) for a single violation or up to one million~~
5 ~~dollars (\$1,000,000) for more than one violation.~~

6 "(3) For the purposes of determining the amount or
7 extent of an administrative assessment, if any, to be imposed
8 under this section, the commission shall consider among other
9 factors, the frequency, persistence, and willfulness of the
10 conduct constituting a violation of any provision of this
11 article or any rule or order issued under this article, and
12 the number of persons adversely affected by the conduct.

13 "(4) The administrative assessment under this
14 section is in addition to any other penalty, remedy, or
15 sanction that may be imposed under this article.

16 "(5) All assessments collected under this subsection
17 (j) of Section 8-6-19 shall be deposited in the general fund
18 of the state.

19 "(k)(1) The commission may charge, in addition to
20 any administrative assessment, fine, penalty, remedy, or
21 sanction imposed under this article, the actual cost of any
22 investigation resulting from any violation of any provision of
23 this article or any violation of any rule or order issued
24 under this article or the actual cost of any examination made
25 by the commission pursuant to this article, to the party or
26 parties subject to such investigation or examination. Such
27 charge may include, but is not limited to, a per diem prorated

1 upon the salary cost of any employee of the commission
2 together with actual travel, housing and any and all other
3 reasonable expenses incurred as a result of such investigation
4 or examination.

5 "(2) All charges assessed for costs involved
6 pursuant to subdivision (1) of subsection (k) of Section
7 8-6-19 shall be deposited in the Alabama Securities Commission
8 Fund in the State Treasury to be drawn upon by the commission
9 for its use in the administration of this article."

10 Section 2. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.

Commission Members



JOSEPH P. BORG
Director
J. RANDALL McNEILL
Deputy Director

Department of Public Examiners
State of Alabama
HAND DELIVERY
Montgomery, Alabama 36130

To Whom It May Concern:

The Current Members of the Commission are:

HAROLD B. KUSHNER Chairman 420 20 th Street, N., Ste 1600 Birmingham, AL 35203-5202	Attorney at Law	03/22/01 – Present (*Exp. 12-17-04)
J. WRAY PEARCE, CPA Vice Chairman 2129 First Ave., North Birmingham, AL 35203-4201	Certified Public Accountant	05/15/01 – Present (*Exp. 11-13-04)
TROY KING 11 South Union Street Montgomery, AL 36130	Attorney General	03/08/04 – Present
JOHN HARRISON 401 Adams Ave, Ste. 680 Montgomery, AL 36130	Superintendent of Banking	02/01/05 - Present
WALTER BELL, 201 Monroe Street Montgomery, AL 36130	Commissioner of Insurance	01/21/03 - Present

ALABAMA SECURITIES COMMISSION

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MONTGOMERY, ALABAMA 36130-4700
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April 14, 2007

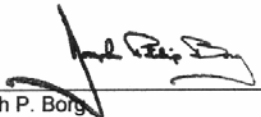
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HAROLD B. KUSHNER
Attorney at Law
VICE CHAIRMAN
J. WRAY PEARCE
Certified Public Accountant

COMMISSIONERS

TROY KING
Attorney General
JOHN D. HARRISON
Superintendent of Banks
WALTER A. BELL
Commissioner of Insurance
TYRONE C. MEANS
Attorney at Law
DANIEL C. HARDMAN
Certified Public Accountant

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State of Alabama
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Page 2

TYRONE MEANS, ESQ. 3121 Zelda Court P.O. Drawer 5058 Montgomery, AL 36103-5058	Attorney at Law	05/15/01 – Present (*Exp. 12-17-04)
DANIEL HARDMAN, CPA 2120 16 th Ave., South, Ste 300 Birmingham, AL 35205-5202	Certified Public Accountant	03/19/02 – Present (*Exp. 3-18-06)



Joseph P. Borg
Director

JPB:cr

**Expiration dates are as stated in appointment letters from Governor Don Siegelman to the Alabama Senate (copies of which are attached). Senate confirmation dates may be different than Governor's recommendation dates. Terms for appointments are four (4) years in length. Attorney and CPA appointments are to be staggered as per §8-6-52.

Service of attorneys and CPA's continue until such time as a new appointment is made. Copies of the Alabama Bar Association and the Alabama Society of CPA's recommendations to the Governor are attached.

Agency Response to Significant Item

E-Mail Response

John Norris

From: Borg, Joseph [Joseph.Borg@asc.alabama.gov]
Sent: Friday, June 29, 2007 9:49 AM
To: John Norris
Cc: Rhodes, Chris; McNeill, Randy
Subject: HB797

With regard to HB 797--- and as requested, here are our thoughts on the bill

1. the last increase in licensing fees was in 1991---in discussion with the industry associations, there were no objections or opposition to raising fees to reflect the "average" or median of the majority of states. ----- the net effect to the general fund would be approx \$1,000,000.
2. considering the effect and damage of securities fraud on the general public, violation of the securities laws should be increased from Class C to Class B--- there has been no opposition and the District Attorneys, Atty General and other law enforcement agencies are in agreement that Class B is the correct category
3. most civil liability statutes across the country are much higher than our current 50,000 and some are unlimited ---- large frauds (Enron, WorldCom, MN Partners, Daystar) have multi-million dollar effects. This proposed change affects only the court's jurisdiction in a filed case---- this has no effect on our settlementscases---- as you know we have settled many cases for amounts in excess of 50,000. But court actions in the same type of case is currently limited to 50,000.

We hope this helps in explaining our position and support for this bill